

**INTERNAL DISPLACEMENT AND STATE COMPLIANCE
WITH INTERNATIONAL HUMAN RIGHTS STANDARDS:
The current protection of internally displaced persons' right to
physical security in Nigeria**



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Abstract

There are approximately 65.3 million forcibly displaced people in the world. A large majority of these people are internally displaced. Of the 40.8 million internally displaced persons' (IDPs) worldwide, Nigeria had a total of 1,955,000 IDPs at the end of 2016. Consequently, Nigeria is among the countries with the highest number of displaced persons globally. A wide range of political, economic, social, and environmental factors, including poverty, corruption, and internal armed conflict, affect the population in Nigeria and contribute to internal instability. Thus, as Nigeria represents a complex and multi-layered situation of internal displacement, it makes for an interesting case study to understand international protection of IDPs. This dissertation asks whether the current protection of IDPs' right to physical security in Nigeria complies with international human rights standards. The current international legal framework in place for the protection of IDPs is relatively extensive, and undergoes continuous development. The United Nations Guiding Principles for the Protection of Internally Displaced People and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), as well as general human rights mechanisms, comprehensively set out the rights and guarantees for the protection of the physical security of IDPs. Although there has been great improvement in recent years relating to the legal protection of and assistance to IDPs, the *de facto* implementation and enforcement of these frameworks in Nigeria is not in full compliance with international human rights standards.

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Abbreviations

AAS – Abuja Action Statement

ACHPR – African Charter on Human and Peoples Rights

AU – African Union (previously OAU)

CAT – Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment

ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms

ECOWAS – Economic Community Of West African States

Guiding Principles – United Nations Guiding Principles on Internal Displacement

HRC – Human Rights Committee

HRW – Human Rights Watch

ICC – International Criminal Court

ICCPR – International Covenant on Civil and Political Rights

ICRC – International Committee of the Red Cross

IDMC – Internal Displacement Monitoring Centre

IDPs – Internally Displaced Persons/People

IHL – International Humanitarian Law

IHRL – International Human Rights Law

Kampala Convention - African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

NEMA – National Emergency Management Council

NRC – Norwegian Refugee Council

OAU – Organisation of African Unity

OCHA - United Nations Office for the Coordination of Humanitarian Affairs

PSWGN - Protection Sector Working Group Nigeria

RPSF – Regional Protection Strategic Framework

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

1. Introduction

The international community is currently dealing with an unprecedented number of displaced people globally, and there are 65.3 million forcibly displaced people worldwide.¹ 40.8 million of these people are internally displaced persons (IDPs).² Disturbingly, the numbers show that there are twice as many IDPs than refugees worldwide, and thus they make up almost two-thirds of the whole forcibly displaced population. The Internal Displacement Monitoring Centre reported 6.9 million new internal displacements associated with conflict and violence in 2016.³ Thus, the majority of forcibly displaced people are not refugees, as often presumed, but are displaced within the borders of their own state.

Nigeria is one of the countries that experienced the highest number of new displacements caused by violence and conflict in 2016.⁴ By the end of 2016, 1,955,000 people were internally displaced in Nigeria.⁵ This places Nigeria among the countries with the largest population of IDPs in the world.⁶ Many of the Nigerian IDPs are victims of the continuous armed conflict between the state and Boko Haram, either directly or indirectly, and a wide range of political, economic, social, and environmental factors contribute to the instability in the country, and create fertile grounds for Boko Haram's armed conflict.⁷

This dissertation researches the question of whether the current protection of IDPs' right to physical security in Nigeria comply with international human rights standards. It provides a brief understanding of internal armed conflict and general human rights violations as causes of internal displacement in northeast Nigeria, as well as exploring the international legal framework in place to protect the IDPs in the area. Additionally, this dissertation identifies measures taken to enforce the protection of IDPs' right to

¹ United Nations High Commissioner for Refugees (UNHCR), 'Global Trends – Forced Displacement in 2015' (2016) at 2, available at <https://s3.amazonaws.com/unhcrsharedmedia/2016/2016-06-20-global-trends/2016-06-14-Global-Trends-2015.pdf>, accessed on 14 August 2017.

² Ibid.

³ Internal Displacement Monitoring Centre, 'Global Report on Internal Displacement – Grid 2017' (2017) at 12, available at <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>, accessed on 14 August 2017 (hereafter IDMC).

⁴ Ibid at 13.

⁵ Ibid at 24.

⁶ Ibid.

⁷ Internal Displacement Monitoring Centre, 'Country Profile – Nigeria' (2017), available at <http://www.internal-displacement.org/countries/nigeria/>, accessed on 24 May 2017 (hereafter IDMC).

physical security and the national implementation and enforcement of international legal frameworks, and assesses whether there are gaps in international law that allow for violations of the IDPs' right to physical security.

The dissertation is divided into six chapters. Following the introduction, the methodology used in this paper is presented, as well as a review of the most important current literature on the subject. The second chapter examines who an IDP is, how they are distinguished from a refugee, and under whose jurisdiction they fall. The third chapter explores the international legal framework in place for the protection of IDPs in Nigeria. This is done by reviewing the current international, regional, and national legal frameworks and the different mechanisms in place to protect IDPs' right to physical security. Chapter four of this paper consists of a case study of the situation for IDPs in northeast Nigeria. By considering the situation in northeast Nigeria, this dissertation considers the international protection provided to IDPs in the area, specifically to those fleeing from internal armed conflict, generalised violence, and human rights violations. This case study is conducted to examine possible violations of IDPs' right to physical security. Chapter five assesses the different measures taken to ensure the protection of IDPs. Furthermore, as the Kampala Convention is the first international legally binding document relating to assistance and protection, this study assesses the national implementation and enforcement of protection provided for Nigerian IDPs. Section six of this dissertation discusses and concludes whether the international protection of the right to physical security provided for IDPs in Nigeria is *de facto* complying with international human rights standards. This is done by examining violations of IDP rights accounted for in the case study and considering the issues of implementation and enforcement of the international legal framework in the area of concern. Finally, this dissertation concludes that the *de facto* protection of IDPs in northeast Nigeria is not in full compliance with international human rights standards.

1.1 Methodology

The research conducted in this dissertation is based on desktop research. This is qualitative research that draws from both primary sources, like conventions, treaties, and legislative documents, and second-hand research through the use of journal articles, reports, books, and news sources. The availability of the vast academic

research conducted on Nigeria and IDPs makes this type of research possible. The research is based on reports and data from organisations that work closely with assisting and monitoring IDPs, such as the UNHCR, Norwegian Refugee Council, and the Internal Displacement Monitoring Centre. Due to practical constraints, the opportunity to conduct primary research independently is limited. Travels in the northeast of Nigeria are strongly advised against by several governments due to armed conflict and terrorist activities.⁸ Therefore, this dissertation relies on trustworthy information from organisations and actors who are well-established in these areas and have access to the areas and people concerned. However, due to the chaotic nature of conflict and displacement and the accessibility to the areas where IDPs are held, the information found in the reports and articles may vary.

As the research conducted in this dissertation is based on reliable sources and extensive previous research on the issue, the conclusions reached in this paper regarding the protection of IDPs in Nigeria are valid. However, the conclusions drawn are not generalisable as this dissertation does not offer a comparative study. The findings in this dissertation may be applicable to other cases of internal displacement due to internal conflict, generalised violence, and human rights violations, but to validate this further research and studies must be conducted.

1.2 Literature review

Much research has been conducted and literature written on the issue of internal displacement. What is core for most of these is the issue of protection of IDPs, as they are still within the borders of their country of origin. Although in many cases their suffering may amount to persecution, the state is either unwilling or unable to protect them. However, they are not protected by the same international legal framework as refugees, even though many might have valid refugee claims if they were to cross an international border. The issue of international protection of IDPs is becoming more relevant in our increasingly globalised world where we interact, trade, and communicate with each other across international borders. This makes it much more

⁸ See travel advice from Canada advising against non-essential travel to the country and against all travel to the states in the northern and middle belt at <https://travel.gc.ca/destinations/nigeria>, accessed on 09 May 2017. The United Kingdom also advises against all travels to the north-eastern states in the country at <https://www.gov.uk/foreign-travel-advice/nigeria>, accessed on 09 May 2017.

difficult to ‘look away’ when confronted with individuals suffering violence and persecution within a state that is unwilling or unable to protect them. Furthermore, with the developments of the past decade, states are increasingly unwilling to accept refugees and asylum seekers. Consequentially, individuals are displaced and trapped within the borders of the state that is failing to protect them. Therefore, it is important to look at the current international legal framework in place to protect IDPs and what responsibility states and the international community of states have to protect IDPs.

Naturally, much of the current literature on internal displacement discusses the definitional issues of IDPs and the distinction between IDPs and refugees. This is integral to the discussion around IDPs and international legal protection, as a definition of who can be considered IDPs is essential for an agreement on what rights and protection ought to be extend to those considered IDPs. Furthermore, authors have discussed the international legal framework in place to protect IDPs, as well as arguing the need to distinguish IDPs from other citizens.

Erin Mooney discusses IDPs and internal displacement as a category of concern.⁹ Mooney concludes that IDPs have certain needs that are distinct from the general population and require special attention.¹⁰ Yet, it is argued that IDPs should be treated as victims of war, and that singling out IDPs as a specific category for concern might lead to discrimination against others.¹¹ It is true that IDPs are usually a part of a larger group of people in need suffering from civil war or natural disasters, but being displaced also implies specific needs and risks in addition to those needs shared with other victims of conflict.¹² However, it is important to note that the very purpose of identifying IDPs as a distinct category of concern is not to privilege IDPs over others, but to ensure that their needs are addressed and their rights protected along with those of other persons.¹³ Furthermore, IDPs are recognised as more than just victims of conflict or persecution, as it includes forced displacement due to natural disasters and

⁹ Erin Mooney ‘The Concept of Internal Displacement and the case for Internally Displaced People as a Category of Concern’ (2005) 24(3) *Refugee Survey Quarterly*.

¹⁰ *Ibid* at 18.

¹¹ *Ibid* at 14.

¹² *Ibid* at 18.

¹³ *Ibid* at 19.

developmental projects. Consequently, internal displacement is much broader than the refugee concept.¹⁴

In assessing the concept of ‘refugeehood’, James Hathaway defines persecution as ‘the sustained or systematic failure of state protection in relation to one of the core entitlements of human rights’.¹⁵ Although this definition has been discussed and questioned, it is also the one most often referred to by the courts.¹⁶ One of the critical issues with Hathaway’s definition is the requirement of an act of persecution to be sustained or systemic, thus a level of persistency. The problem is that some acts of serious harm are not, and should not be, repetitive, like the killing of a family member or female genital mutilation.¹⁷ This is a concept that has been widely accepted, and the UNHCR Handbook and Guidelines for Procedures and Criteria for Determining Refugee Status explicitly state that any serious violations of human rights would constitute persecution if committed on the grounds ‘of race, religion, nationality, political opinion, or membership of a particular social group’.¹⁸

When applying Hathaway’s definition of persecution to an IDP fleeing from Boko Haram in north-eastern Nigeria, being victims of acts of violence on the basis of religion or political opinion would arguably fulfil the requirement of persecution. The same could be argued for victims of reported police or military brutality in relation to the national counterterrorism policy. However, creating one definition for all forcibly displaced, such as broadening the United Nations Convention Relating to the Status of Refugees (UN Refugee Convention)¹⁹ definition to include IDPs, seems unlikely as it would be a radical step for the international community regarding a perceived responsibility to protect state sovereignty and legal jurisdiction.

¹⁴ Mooney op cit note 9 at 13.

¹⁵ James C. Hathaway *The Law of Refugee Status* (1991) at 112.

¹⁶ Fatima Khan & Justin de Jager ‘Chapter 4: Persecution (acts, agents and grounds)’ in Fatima Khan and Tal Schreier (eds.) *Refugee Law in South Africa* (2014) 46-73 at 50-51.

¹⁷ Ibid at 53-54.

¹⁸ United Nations High Commissioner for Refugees, Handbook and Guidelines for Procedures and Criteria for Determining Refugee Status under the 1952 Convention and the 1967 Protocol Relating to the Status of Refugees (2011) UN Doc HCR/1P/4/ENG/REV. 3, at para. 51.

¹⁹ The United Nations Convention Relating to the Status of Refugees, 189 UNTS 150, adopted on 25 July 1951 and entered into force on 22 April 1954 (hereafter UN Refugee Convention).

Hathaway and Foster²⁰ discuss the exclusion of the internally displaced in the UN Refugee Convention. They acknowledge IDPs as objects of humanitarian concern, but state that such persons did not suffer from the legal disabilities of enforced alienage as refugees, by virtue of still being within the jurisdiction of national protection.²¹ The drafters of the refugee convention had several concerns regarding the consideration of IDPs. Firstly, an inclusion of IDPs in the international protection regime might prompt shift responsibility of their own citizens over to the international community.²² Secondly, an attempt to respond to the needs of IDPs would be a serious infringement of the principle of sovereignty.²³ Consequently, due to the limitation of international rule of law and the time of drafting, the solution was to provide protection through the UN Refugee Convention to those who managed to free themselves from the territorial jurisdiction of their state of origin.²⁴

The inclusion of alienage in the definition of a refugee in the UN Refugee Convention was not to limit who has access to protection, but rather a practical condition precedent to placing the individual within the effective scope of international protection.²⁵ Where a person is experiencing persecution and violence in one part of the country, but could escape this by moving to another part of the country, the person has access to internal safety and consequently does not fulfil the requirements of refugee status.²⁶ However, Hathaway recognises that where the internal protection is unpredictable or fails to meet basic human rights, refugee status should be appropriately recognised.²⁷ This does not address the issue of IDPs who are unable to leave their country of origin and who are suffering under failing protection from the state. Yet, important developments have been made since the drafting and adoption of the UN Refugee Convention, including increasing international focus on protecting IDPs and identifying international legal frameworks to protect such persons.

Walter Kälin has been the United Nations Representative of the Secretary-General on

²⁰ James C. Hathaway & Michelle Foster *The Law of Refugee Status* 2 ed (2014) at 17-19; Hathaway op cit note 15 at 29-32.

²¹ Hathaway & Foster op cit note 20 at 17.

²² Ibid at 17-18.

²³ Ibid at 18.

²⁴ Ibid.

²⁵ Hathaway op cit note 15 at 31-32.

²⁶ Ibid at 133-134.

²⁷ Ibid at 134.

the human rights of internally displaced persons since 2004.²⁸ Kälın acknowledges internal displacement as a global problem.²⁹ In exploring the origins and development of the United Nations Guiding Principles on Internal Displacement (Guiding Principles), Kälın remarks that the impact of internal displacement is not restricted to those who flee their homes.³⁰ The general population and neighbouring countries are also affected through political, economic, and social strains.³¹ Kälın further notes the importance of the Guiding Principles, and their efforts to identify the extent to which national sovereignty entails clear, existing responsibilities to the needs of IDPs without trying to create new legal obligations.³²

The Guiding Principles are based on the Compilation and Analysis of Legal Norms concerning internally displaced persons submitted by Francis Deng, to the Commission on Human Rights in 1996.³³ The Guiding Principles were submitted to the Human Rights Commission in 1998.³⁴ The Guiding Principles were created to address the specific needs of IDPs worldwide, and they identify the relevant rights and guarantees for IDPs under international law.³⁵ They are consistent with international law and international humanitarian law (IHL), and provide guidance on how different actors shall deal with internal displacement. Although the principles are not legally binding, they are internationally persuasive and constitute soft law.³⁶ Soft law is understood as rules that may become binding rules of international law.³⁷ The development of the Guiding Principles as a soft law standard was essential to establish the issue of internal displacement on national and international agendas, as well as

²⁸ United Nations Human Rights Office of the High Commissioner ‘Mr. Walter Kälın, Representative of the Secretary-General on the human rights of internally displaced persons’ available at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/WalterKalin.aspx>, accessed on 24 May 2017.

²⁹ Walter Kälın & Rhodri C. Williams ‘Chapter 1: Introduction’ (2010) *Studies in Transnational Legal Policy* 41 at 1.

³⁰ *Ibid* at 2.

³¹ *Ibid*.

³² *Ibid* at 3.

³³ Walter Kälın ‘The Guiding Principles on Internal Displacement Introduction’ (1998) *International Journal of Refugee Law* 10(3) at 557.

³⁴ *Ibid* at 557-558. The details of the Guiding Principles will be explored further in Chapter 3 of this dissertation.

³⁵ United Nations High Commissioner for Refugees (UNHCR) Guiding Principles on Internal Displacement (1998) UN Doc ADM 1.1, PRL 12.1, PR00/98/109 at 1, available at <http://www.refworld.org/docid/3c3da07f7.html>, accessed 21 May 2017 (hereafter UN Guiding Principles).

³⁶ Roberta Cohen ‘The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting’ (2004) *Global Governance* 10(4) at 495.

³⁷ Thomas Gammeltoft-Hansen, Stéphanie Lagouette & John Cerone *Tracing the Roles of Soft Law in Human Rights* (2016) at 5.

further understand and better protect the rights of IDPs.³⁸

Roberta Cohen describes the Guiding Principles as an innovation in international standard-setting.³⁹ Cohen concludes that the Guiding Principles fill a major gap in the international protection of displaced people.⁴⁰ The Guiding Principles provides IDPs with a document that they can turn to for protection and assistance, without creating a new set of international laws.⁴¹ Since the Guiding Principles were not drafted and adopted by states, certain states raised concerns about the development process and the international standing of the Guiding Principles.⁴² The concern was that the promotion of international standards that were not negotiated by governments, on such a sensitive subject as IDPs, could mean an erosion of state sovereignty.⁴³ Nevertheless, the choice to not create a treaty or convention that would be legally binding for states can on the one hand be seen as beneficial, as drafting a treaty or convention can take decades and there is no guarantee that the convention or treaty will procure the necessary ratifications.⁴⁴ In this way, using the current international legal framework to raise awareness and promote protection for IDPs is an innovation in international standard-setting. Conversely, the Guiding Principles have no monitoring or enforcement mechanisms, and as they are not legally binding it may be a challenge to get states to abide by them.⁴⁵ This has been resolved by governments, NGOs, and UN Agencies becoming increasingly involved in adopting and monitoring the provisions of the Guiding Principles.⁴⁶

Francis Deng maintains that the central issues that lead to internal displacement must be resolved in order to alleviate human suffering.⁴⁷ Deng concludes that as long as conflict prevails, deprivation will persist, and human rights and fundamental freedoms

³⁸ Megan Bradley & Angela Sherwood 'Chapter 8: Addressing and resolving internal displacement' in Thomas Gammeltoft-Hansen, Stéphanie Lagouette & John Cerone (eds.) *Tracing the Roles of Soft Law in Human Rights* (2016) at 157.

³⁹ Cohen op cit note 36.

⁴⁰ Ibid at 476.

⁴¹ Ibid.

⁴² Ibid at 460 and 472.

⁴³ Ibid at 472.

⁴⁴ Ibid at 475.

⁴⁵ Ibid at 477.

⁴⁶ Ibid.

⁴⁷ Francis Deng 'The International Protection of the Internally Displaced' (1995) *International Journal of Refugee Law* 7 at 76.

will continue to be violated.⁴⁸ His article explores the definitional issues relating to internal displacement, and discusses the legal standards and institutional arrangements, as well as the operational mechanisms of protection for the internally displaced. He writes that a crucial factor in the debate around defining IDPs should be to balance the need for precision in the definition of concepts and the flexibility necessary for providing optimum protection and assistance.⁴⁹ Deng concluded that it was unlikely that one organisation would be mandated to undertake full responsibility for IDPs, nor that a new mechanism would be established to provide protection and assistance for IDPs.⁵⁰ Considering Deng's predictions, he was quite right. There is no mechanism solely devoted to IDPs, and there are still issues regarding the international legal framework in place to protect IDPs.

Guy S. Goodwin-Gill partially addresses this when he writes about the continuing relevance of refugee law in the globalised world.⁵¹ He notes that the mandate of the UNHCR is stretched past just the concern of refugees with a well-founded fear of persecution, but also includes migrants and the internally displaced.⁵² Consequently, Goodwin-Gill affirms Deng's prediction in that there is no sole mechanism devoted to IDPs. Arguably, this contributes to the confusion and issues around the connection between refugees and IDPs, as the main international mechanism devoted to the protection and assistance of refugees also serves as the main international mechanism in protecting IDPs.

In a world that is constantly changing, Goodwin-Gill notes the importance of international refugee law as a mechanism of protection and accountability for persecution and human rights violations.⁵³ He highlights the role of international refugee law as a tool that redresses, reclaims, and recaptures the balance between individual and state.⁵⁴ In this way, international refugee law may be relevant as a tool to address issues relevant to IDPs. However, this does not provide any effective

⁴⁸ Deng op cit note 47 at 76.

⁴⁹ Ibid at 86.

⁵⁰ Ibid.

⁵¹ Guy S. Goodwin-Gill 'The Continuing Relevance of International Refugee Law in a Globalized World' (2015) *Intercultural Human Rights Law Review* 10, 25-42.

⁵² Ibid at 29.

⁵³ Ibid at 40.

⁵⁴ Ibid at 42.

protection for IDPs through refugee law, but rather shows how violations suffered by IDPs can be addressed through refugee law when the refugee seeks protection in another country. The question is, whether it would be beneficial for IDPs to be covered by international refugee law.

Nils Geissler assesses the international protection of IDPs.⁵⁵ Geissler argues that equal treatment of refugees and IDPs is ‘only feasible if their factual legal situation can be compared’.⁵⁶ Since this cannot be done, there should be no comparison between IDPs and the legal status of refugees under international law.⁵⁷ Even though the situations may be similar for refugees and IDPs, and the only clear difference is the crossing of international borders, internationally recognised state borders still identify territorial sovereignty and ‘there is no precedent in international law which puts that dividing line into doubt’.⁵⁸ Like Mooney,⁵⁹ Geissler concludes that the identification and definition of IDPs is not to give them a privileged status, but to ensure that their specific needs are adequately addressed.⁶⁰ Geissler highlights areas of the *lex lata* where considerable gaps in legal protection can be observed. Here he points out that state reservations to and derogations from conventions and treaties induce a weakened international legal framework, as well as non-application of Common Article 3 in the Geneva Conventions⁶¹ and failure to implement and enforce the rights applicable.⁶² To this end, it is interesting to explore the *de facto* protection of IDPs in Nigeria, also because IDPs have obtained further legal protection since Geissler’s analysis.

To summarise, this chapter explores the current literature on the subject of international protection of IDPs. Various authors have studied the definitional issues around IDPs, as well as the link between refugees and IDPs. It becomes clear that treating IDPs as refugees may neither be possible nor desirable. Furthermore, it is

⁵⁵ Nils Geissler ‘The International Protection of Internally Displaced People’ (1999) *International Journal of Refugee Law* 11(3).

⁵⁶ *Ibid* at 457.

⁵⁷ *Ibid*.

⁵⁸ *Ibid*.

⁵⁹ Mooney *op cit* note 9 at 19.

⁶⁰ Geissler *op cit* note 55 at 458.

⁶¹ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 75 UNTS 278 adopted 12 August 1949 and entered into force 21 October 1950 (hereafter Geneva Convention (IV)) art. 3.

⁶² Geissler *op cit* note 55 at 459-461.

evident that IDPs were (and are) much reliant on the provisions in international human rights law (IHRL) and IHL, highlighted through the Guiding Principles. On the basis of previous literature on IDPs, this dissertation will further explore the specific international legal framework in place to protect IDPs in northeast Nigeria, and whether this protection is implemented and enforced.

2. Who are IDPs?

This chapter provides for the definition of IDPs and refugees to explain the distinction between the two. Furthermore, this chapter seeks to unpack the meaning of ‘forced displacement’, as well as determine when IDPs stop being IDPs.

2.1 International definition of refugees

The definitions of refugees and internally displaced people are important, and there is a distinct difference between the two groups. The importance of the definition is undeniable, as it determines who may enjoy the protection of international refugee law. The UN Refugee Convention defines a refugee as any person who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality’ and is unwilling or unable to avail her/himself to the protection of that country.⁶³ The definition was amended through the Protocol Relating to the Status of Refugees,⁶⁴ which removed the temporal and geographic limitations to the definition,⁶⁵ as it was clearly biased to a Eurocentric worldview and context. This definition is the main international legal document binding states to the definitions and determinations of who may be regarded as a refugee.

2.2 African definition of refugees

The Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) created by the Organisation of African Unity (OAU) offers a more extensive definition of refugees.⁶⁶ This is the only regional refugee instrument governing the protection of refugees that is legally binding.⁶⁷ The OAU Convention provides for two definitions of a refugee. The first definition⁶⁸ is virtually identical to

⁶³ UN Refugee Convention *supra* note 19 art. 1(A)(2).

⁶⁴ *Ibid* art. 1(B)(1); United Nations Protocol Relating to the Status of Refugees, 606 UNTS 150, adopted on 31 January 1967 and entered into force on 4 October 1967.

⁶⁵ Article 1 (B)(1) contained the geographical restriction of the refugee status, limiting it to events occurring in Europe or elsewhere. Member states could choose as to where ‘elsewhere’ could apply. The Protocol amended this.

⁶⁶ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45, adopted on 10 September 1969 and entered into force 20 January 1974 (Hereafter OAU Convention).

⁶⁷ Tal Schreier ‘Chapter 5: The expanded refugee definition’ in Fatima Khan and Tal Schreier (eds.) *Refugee Law in South Africa* (2014) at 74.

⁶⁸ OAU Convention *supra* note 66 art. 1(1).

that offered by the UN Refugee Convention.⁶⁹ However, Article 1(2) of the OAU Convention provides for an expanded definition, stating that a person ‘owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence’.⁷⁰ This allows for a broader understanding of the term ‘refugee’. The expansion of the definition allows for a person to qualify as a refugee due to ‘external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality’, which is arguably more relevant and suitable to the challenges faced by refugees on the African continent today.

2.3 Internally displaced persons

Internally displaced persons (IDPs) are individuals or groups of individuals displaced within their own country of origin. The UN Refugee Convention and the OAU Convention definitions have an element of alienage; asserting that a refugee is someone who has crossed an international border. By virtue of this, these conventions neither define nor offer protection for IDPs.

Since the issue of internal displacement was first addressed in the 1990s, various academics have discussed the intention and the importance of a definition of IDPs. For some, internal displacement only refers to those uprooted by conflict, violence, or persecution, whereas others consider internal displacement as a broader concept including those affected by natural disasters and developmental projects.⁷¹ Including the element of natural or man-made disasters as a separate root cause for displacement is subject to some of the main critiques against the definitions of IDPs.⁷² It is argued that those who flee on this basis in comparison to those who flee from armed conflict or persecution, are not confronted with all the same problems.⁷³ Thus, most IDPs leaving due to natural or man-made disasters do not find themselves in a refugee-like

⁶⁹ UN Refugee Convention *supra* note 19 art. 1(A)(2).

⁷⁰ OAU Convention *supra* note 66 art. 1(2).

⁷¹ Mooney *op cit* note 9 at 9.

⁷² Geissler *op cit* note 55 at 455.

⁷³ *Ibid.*

situation, and their problems are more linked to social and economic rights than civil and political ones.⁷⁴

Further, there have been discussions about expanding the IDP definition to include ‘persons who migrate because of extreme poverty or other economic problems’.⁷⁵ This has been rejected, and the definition does not include these groups because the element of coercion is often unclear.⁷⁶ Although IDPs are often described as internal refugees, in fact, the concept of IDPs is much broader, as it is not limited to conflict and persecution.⁷⁷

The working definition presented by the Economic and Social Council of the United Nations when the issue of IDPs were first addressed, considered IDPs to be:

Persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violation of human rights or natural or man-made disasters; and who are within the territory of their own country.⁷⁸

This definition is descriptive and it contains two crucial elements which identify the nature of the internal displacement problem.⁷⁹ The first is the element of forced displacement, and not leaving voluntarily. The second is the element of remaining within national borders. However, there is a clear quantitative and temporal limitation to the definition, through requiring persons to flee in large numbers and that the flight must be sudden or unexpected.⁸⁰ Nonetheless, the core elements in the working definition are also the core of the definition presented in the Guiding Principles,⁸¹ although without the quantitative and temporal limitations.

⁷⁴ Geissler op cit note 55 at 455.

⁷⁵ Mooney op cit note 9 at 13.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Deng op cit note 47 at 76.

⁷⁹ Ibid at 76-77.

⁸⁰ Geissler op cit note 55 at 455.

⁸¹ UN Guiding Principles op cit note 35 at 1.

In 1998, the United Nations released its Guiding Principles on Internal Displacement with the purpose of identifying the specific needs of IDPs.⁸² Section 2 of the introduction to the Guiding Principles defines internally displaced people as:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.⁸³

This definition is arguably the most commonly used to define ‘internally displaced’.⁸⁴ However, this is not a legally binding document, and it does not offer any explicit protection or assistance for IDPs in itself. It only ‘identifies the rights and guarantees relevant to the protection’⁸⁵ of IDPs reflected in IHRL and IHL. This is where the concept of soft law, as mentioned in Chapter 1, becomes important.

The Guiding Principles may play an important role in IHRL through the concept of soft law. It is argued that soft law provides a useful approach to account for important expressions of international human rights falling outside the traditional sources.⁸⁶ Here, the Guiding Principles serves as an important tool, as they outline the current hard law and its application to IDPs, without the document being legally binding itself. Furthermore, soft law can be used to influence and shape hard law.⁸⁷ An excellent example of this is how the Guiding Principles have influenced the development of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).⁸⁸ As such, the norm-creating process of IDP soft law has contributed significantly to raising the profile of the issue of internal displacement as an international concern.⁸⁹ However, domestically the Guiding

⁸² UN Guiding Principles op cit note 35 at 1.

⁸³ Ibid.

⁸⁴ International Committee of the Red Cross, Advisory Service on International Humanitarian Law; Internally Displaced Persons and International Humanitarian Law (2010), available at <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>, accessed on 14 April 2017.

⁸⁵ UN Guiding Principles op cit note 35 at 1.

⁸⁶ Michèle Olivier ‘The Relevance of ‘Soft Law’ as a Source of International Human Rights Law’ (2002) *The Comparative and International Law Journal of Southern Africa* 35(3) at 306.

⁸⁷ Ibid.

⁸⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted on 23 October 2009 and entered into force 6 December 2012 (hereafter Kampala Convention).

⁸⁹ Bradley & Sherwood op cit note 38 at 181.

Principles tend to be contested or overlooked as a matter of domestic practice and struggle to influence the communities in complex contexts where even national laws are not properly implemented and enforced.⁹⁰

The Kampala Convention is the first international legal document considering protection and assistance to IDPs.⁹¹ It defines internal displacement as ‘the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders’.⁹² The definition provided for ‘internally displaced persons’ in the Convention⁹³ is a direct quote from the definition in the Guiding Principles.⁹⁴ As this is the definition used in both international documents, this is the definition of IDPs that will be used for the purpose of this dissertation.

2.4 Arbitrary displacement

The Guiding Principles and the Kampala Convention state that IDPs are forced or obliged to flee their homes. They both also set out what constitutes arbitrary displacement. The Kampala Convention defines internal displacement as ‘the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised borders’.⁹⁵ The Guiding Principles provides a list of acts or reasons that constitute arbitrary displacement:

- (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.⁹⁶

⁹⁰ Gammeltoft-Hansen, Lagouette & Cerone op cit note 37 at 11.

⁹¹ Fatima Khan ‘Chapter 2: The Alienage Requirement’ in Fatima Khan and Tal Schreier (eds.) *Refugee Law in South Africa* (2014) at 23-24.

⁹² Kampala Convention supra note 88 art. 1(l).

⁹³ Ibid art. 1(k).

⁹⁴ UN Guiding Principles op cit note 35 at 1.

⁹⁵ Kampala Convention supra note 88 art. 1(l).

⁹⁶ Guiding Principles op cit note 35 at principle 6(2).

The Kampala Convention provides for a similar list of categories of arbitrary displacement, but includes an even more detailed list of acts that constitutes arbitrary displacement, adding displacement as warfare, generalised violence or human rights violations, displacement as a result of harmful practices, and forced evacuation.⁹⁷ These categories provide a substantial overview of what constitutes arbitrary displacement. Additionally, the Kampala Convention requires state parties to declare acts of arbitrary displacement punishable by law when it amounts to genocide, war crimes, and crimes against humanity.⁹⁸ Importantly, these categories make it clear that not only armed conflict and discrimination are causes of displacement, but also natural and human made disasters. These categories provide a clear understanding as to what constitutes obliged or forced internal displacement. Consequently, internal displacement is much broader than the refugee concept.⁹⁹ Due to the limits and constraints placed on this dissertation, it will only consider internal displacement caused by Principle 6(2)(b) of the Guiding Principles and Article 4(4)(b) and 4(4)(d) of the Kampala Convention.

2.5 Cessation of internal displacement

Since the concept of internal displacement is relatively broad, setting a strict framework for deciding when internal displacement ends is rather difficult. The Guiding Principles state that ‘displacement shall last no longer than required by the circumstances’.¹⁰⁰ This is a broad and vague statement, and unlike refugee law, it does not explicitly define when internal displacement ceases to exist.

It is argued that if the fundamental problems connected with the uprootedness have ceased to exist, or been significantly alleviated, a person can no longer be considered displaced.¹⁰¹ As such, the issue is not one of duration of time passed since displacement, rather whether there has been a solution to the cause of displacement. For some, internal displacement only ends upon the IDPs’ return to their habitual residence, however, sometimes safe return is not possible.¹⁰² In this case, the

⁹⁷ Kampala Convention *supra* note 88 art. 4(4).

⁹⁸ *Ibid* art. 4(6).

⁹⁹ Mooney *op cit* note 9 at 13.

¹⁰⁰ UN Guiding Principles *op cit* note 35 at principle 6(3).

¹⁰¹ Deng *op cit* note 47 at 81.

¹⁰² Mooney *op cit* note 9 at 22.

displacement can go on for years with little prospect of ever returning. In other cases, the displacement ends shortly after the actual displacement occurred, and for some the capacity and willingness of the government to provide humanitarian assistance is the deciding factor for when they can return.¹⁰³

The Guiding Principles envision two ways that replacement can end, either through voluntary return or voluntary resettlement. Principle 28 creates a responsibility on the state to establish conditions and means for the IDP to voluntary return with safety and dignity to their place of habitual residence, or to voluntary resettle in in another part of the country.¹⁰⁴ Additionally, Principle 29 ensures that IDPs who have returned or resettled shall not be subjected to any form of discrimination due to being displaced, as well as placing a duty upon the state to assist IDPs with recovering, or providing compensation for, lost property or possessions.¹⁰⁵ The Guiding Principles do not however go into any greater detail of how this should be accomplished and how the voluntary nature of the IDPs' return or resettlement can be ensured.

The Kampala Convention provides for sustainable return, local integration, or relocation in as solutions to internal displacement.¹⁰⁶ It requires state parties to seek lasting solutions by promoting and creating satisfactory conditions and circumstances where relocation, return, or integration can happen safely and with dignity. Furthermore, it is stipulated that state parties must ensure that IDPs have access to information to make independent decisions relating to solutions to their displacement, as well as providing mechanisms to resolve disputes relating to IDPs' property and assist with the restoration of lands.¹⁰⁷ Additionally, states shall cooperate with the African Union (AU), international organisations, humanitarian agencies, and civil society to find sustainable and long-lasting solutions for the IDPs. Lastly, the state has the duty to provide IDPs with sufficient remedies and reasonable compensation or other reparation where it is necessary.¹⁰⁸

¹⁰³ Mooney op cit note 9 at 22.

¹⁰⁴ UN Guiding Principles op cit note 35 at principle 28.

¹⁰⁵ Ibid at principle 29.

¹⁰⁶ Kampala Convention supra note 88 art. 11.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid art. 12.

However, there is no direct cessation clause in the Kampala Convention nor is there a clear explanation of when conditions are deemed to be satisfactory to constitute safe and dignified solutions for return or resettlement of IDPs. A crucial criterion for return or resettlement would be that protection is no longer needed and that the government is able to ensure the physical, material, and legal safety of the IDPs.¹⁰⁹

2.6 Jurisdiction

By the mere definition of being internally displaced, a person is still within the borders of their state of origin. This means that the IDPs are effectively under the territorial jurisdiction of their state of origin. As a result, the national government bears the main responsibility for meeting the needs for protection and assistance of IDPs.¹¹⁰ Similarly, the Kampala Convention clearly states that the governments themselves ‘bear the primary duty and responsibility for providing protection of and humanitarian assistance to IDPs within their territory or jurisdiction’.¹¹¹ One of the core issues with the state itself bearing the primary responsibility to protect IDPs is that the governments themselves often cause or tolerate the violations of IDP rights.¹¹²

The Guiding Principles, although recognising that the primary responsibility of protecting IDPs lies with the national government, changed the understanding of sovereignty to a form of national responsibility towards the especially vulnerable in the community, with a role provided for by the international community when governments are unable or unwilling to protect the internally displaced.¹¹³ The Kampala Convention, in addition to stating that states carry the main responsibility for protecting IDPs, also declares that states shall respect the mandates and roles of international organisations in protecting and assisting IDPs, as well as promoting cooperation amongst states in providing protection of IDPs.¹¹⁴ Moreover, the Kampala Convention places obligations on international organisations and humanitarian agencies when protection and assisting IDPs, which includes upholding the ‘principles

¹⁰⁹ Geissler op cit note 55 at 456.

¹¹⁰ Deng op cit note 47 at 81.

¹¹¹ Kampala Convention supra note 88 art. 5(1).

¹¹² Geissler op cit note 55 at 452.

¹¹³ Cohen op cit note 36 at 459.

¹¹⁴ Kampala Convention supra note 88 art. 5.

of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct'.¹¹⁵

Conversely, the Kampala Convention also asserts the importance of preserving 'the principle of sovereignty and territorial integrity of states'.¹¹⁶ As a result, if a state is unwilling or unable to protect its IDPs, there are no legal grounds for international intervention to assist IDPs unless the state explicitly request the assistance of other states. Naturally, this becomes problematic if the state is an integral part of the issue that is causing displacement.

To summarise, this chapter defines an IDP through the relevant international framework. Furthermore, this chapter has elaborated on the categories of arbitrary displacement, as well as establishing that this dissertation will focus on displacement caused by armed conflict, situations of generalised violence, and violations of human rights. Lastly, this chapter has explored the indications of when the state of internal displacement ends, as well as established that the state bears the jurisdictional responsibility for IDPs.

¹¹⁵ Kampala Convention supra note 88 art. 6.

¹¹⁶ Ibid art. 5(12).

3. IDPs' rights

This section explores the national, international, institutional, and regional framework in place to protect IDPs. This is done by focusing on IDPs' right to physical security. As the emphasis in this dissertation is on displacement caused by conflict and general human rights violations, one of the primary needs for those fleeing from such situations is physical security, and thus this dissertation will focus on the laws protecting IDPs' physical security.

3.1 Physical security

The right to physical security is core to human beings and the field of human rights. The right to life is an essential and supreme right which builds the basis on which all other rights and freedoms can be added to.¹¹⁷ The term 'security' itself is a broad concept, and within the framework of human rights it has been defined in various ways, like economic security, food security, political security, national security, and human security. To unpack the idea of physical security, this dissertation explores what physical security entails, and in further chapters whether these rights are violated in Nigeria.

The Oxford Dictionary defines the adjective 'physical' as 'relating to the body as opposed to the mind' or 'relating to things perceived through the senses as opposed to the mind; tangible or concrete'.¹¹⁸ It further defines noun 'security' as 'the state of being free from danger or threat'.¹¹⁹ Thus, by combining the definition of these two words, using the term 'physical security' would literally mean the human body being free from tangible or concrete danger or threat. In human rights, there are three rights that are often linked to physical security; the right to life, liberty, and security of person.¹²⁰ This is the first substantive right protected by the Universal Declaration of Human Rights (UDHR), and deprivation of the right to security of person and liberty has historically been an important means of undermining the enjoyment of other

¹¹⁷ United Nations Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life) (30 April 1982) Para. 1. Available at <http://www.refworld.org/docid/45388400a.html>, accessed on 4 August 2017.

¹¹⁸ Oxford Dictionaries 'English Oxford Dictionaries – Physical' available at <https://en.oxforddictionaries.com/definition/physical>, accessed on 4 August 2017.

¹¹⁹ Oxford Dictionaries 'English Oxford Dictionaries – Security' available at <https://en.oxforddictionaries.com/definition/security>, accessed on 4 August 2017.

¹²⁰ Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 (hereafter UDHR) art. 3.

rights.¹²¹ The Human Rights Committee (HRC) has defined liberty and security of the person by describing liberty as concerning ‘freedom from confinement of the body, not a general freedom of action’ and security of person as concerning ‘freedom from injury to the body and the mind, or bodily and mental integrity’.¹²² Furthermore, when exploring the extent of physical security in the United Kingdom, the Equality and Human Rights Commission assessed that enjoying physical security in relation to adults entails being able to:

[B]e free from violence including sexual and domestic violence and violence based on who you are; be free from cruel, inhuman, or degrading treatment or punishment; be protected from physical or sexual abuse (especially by those in positions of authority); and go out and to use public spaces safely and securely without fear.¹²³

This confirms the presumption that physical security involves the human body being free from concrete danger or threat, however it does not limit violations of physical security to only physical abuse. Thus, this very basic definition and meaning of physical security will be used for the purpose of this thesis.

In exploring physical security and refugee rights, Hathaway¹²⁴ argues that physical security is essential for refugee protection, although the explicit right is absent from the UN Refugee Convention. The HRC has made it clear that the protection and benefits of Articles 6, 7, and 9 of the International Covenant on Civil and Political Rights (ICCPR),¹²⁵ namely the right to life, freedom from torture, and the right to liberty and security of person, are applicable to all ‘non-citizens under the effective jurisdiction of a state party’.¹²⁶ Although IDPs fleeing from conflict and violence cannot be considered refugees, they do share the same need for physical security when fleeing from an area in which their lives are threatened. The HRC has commented that

¹²¹ United Nations Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person) (16 December 2014) UN Doc CCPR/C/GC/35 para 2, available at <http://www.refworld.org/docid/553e0f984.html>, accessed 4 August 2017.

¹²² Ibid para 3.

¹²³ Equality and Human Rights Commission, Physical Security Measurement Framework Series Briefing Paper no. 4 (November 2012) ISBN 978-1-84206-461-0 at 13.

¹²⁴ James C. Hathaway *The Rights of Refugees under International Law* (2005) at 448-450.

¹²⁵ International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171, adopted on 16 December 1966 and entered into force on 23 March 1976 (hereafter ICCPR).

¹²⁶ Hathaway op cit note 124 at 450; United Nations Human Rights Committee (HRC), General Comment no. 15: The position of aliens under the covenant (1986) UN Doc HRI/Gen/Rev.7, May 12 2004 at 140 para 7.

these rights apply to everyone,¹²⁷ including non-citizens in a country, and therefore they are clearly also applicable to IDPs who are citizens. The three articles provide an indication of the minimum protection a person can expect within a state, and thus it highlights what physical security entails. Lastly, Articles 6 and 7 are absolute rights which gives them the status of being non-derogable, and are therefore always applicable regardless of state emergency or other situations where states may derogate from their obligations.¹²⁸ This further acknowledges the assumption that a person should as a minimum expect protection from the state in regard to their right to life and freedom from torture or cruel, inhuman or degrading treatment, or punishment.

The right to physical security is also found in other conventions, like the African Charter on Human and Peoples Rights (ACHPR)¹²⁹ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹³⁰ Importantly, the right to security of the person is established in all three, emphasising the fact that physical security goes beyond just the right to life and freedom from torture. Nigeria is party to the ICCPR and the ACHPR, and therefore their obligations are legally binding.¹³¹ Although these international human rights laws establish the right to physical security, it is primarily the state's responsibility to implement and enforce these rights in their national legislations.

3.2 Nigerian legislation

As previously established in Section 2.6 of this dissertation, IDPs in Nigeria are under the territorial jurisdiction of Nigeria and thus the national government bears the primary responsibility to protect and assist IDPs.

¹²⁷ United Nations Human Rights Committee (HRC) op cit note 126 at 140 para 7.

¹²⁸ ICCPR supra note 125 art.4.

¹²⁹ African Charter on Human and People's Rights (ACHPR), 21 ILM 59, adopted on 27 June 1981 and entered into force on 21 October 1986 (hereafter ACHPR) art. 4, 5 and 6.

¹³⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS 005, Adopted on 4 November 1950 and entered into force on 3 September 1953 art. 2, 3 and 5.

¹³¹ African Union 'List of countries that have signed, ratified/acceded to the African Charter on Human and Peoples Rights' available at https://au.int/sites/default/files/treaties/7770-sl-african_charter_on_human_and_peoples_rights_2.pdf, accessed 09 August 2017; United Nations Treaty Collection 'Human Rights: International Covenant on Civil and Political Rights' available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en, accessed on 28 August 2017.

As Nigerian citizens, IDPs have the right to protection under Nigerian national legislation and laws. The Constitution of the Federal Republic of Nigeria contains fundamental rights for citizens in Chapter IV.¹³² Thus, by law, IDPs are entitled to the rights to life, dignity of the person, freedom from torture or inhumane or degrading treatment, and the right to personal liberty.¹³³ Additionally, all Nigerian citizens have the right to freedom of movement.¹³⁴ Importantly, the constitution also states that IDPs should have the same access to protection by the law as any other citizen.¹³⁵ This is important, because it places an explicit responsibility on the Nigerian state to not discriminate against anyone. The constitution states that the welfare and security of the people shall be the primary purpose of government,¹³⁶ as well as ensuring equal rights, opportunities, and dignity of all citizens.¹³⁷ This means that the Nigerian government is responsible for the physical security of all citizens, including IDPs. Furthermore, Nigeria is party to several international treaties and conventions that extend rights and freedoms to its citizens.

3.3 International protection

Several international treaties and conventions that extend rights to Nigerian IDPs. The basis of the human rights legal framework is the UDHR. The UDHR establishes basic rights and fundamental freedoms that are inherent to all human beings. Although this declaration is not legally binding, it is expressed in the preamble that the UDHR was created to proclaim ‘a common standard of achievement for all peoples and nations’.¹³⁸ The right to physical security in the declaration is established through granting everyone the right to life, liberty and security of person, the prohibition of slavery or servitude, and the prohibition of torture or to cruel, inhuman or degrading treatment, or punishment.¹³⁹ These articles serves as the framework for all other international human rights mechanisms protecting the right to physical security for IDPs.

¹³² Constitution of the Federal Republic of Nigeria, 1999 (hereafter The Constitution).

¹³³ Ibid art. 33, 34 and 35.

¹³⁴ Ibid art. 41.

¹³⁵ Ibid art. 42.

¹³⁶ Ibid art. 14(2)(b).

¹³⁷ Ibid art. 17.

¹³⁸ UDHR supra note 120 at preamble.

¹³⁹ Ibid arts. 3, 4 and 5.

The UDHR is seen by some to be a part of international customary law, and although it is not legally binding *per se* the rights and freedoms established may be legally binding through customary law. International customary law originates from norms that states have accepted and treat as law. The Vienna Convention on the Law of Treaties establishes that a state does not need to be party to a treaty to be obliged by a law recognised as international custom.¹⁴⁰ The International Court of Justice and the United States Supreme Court have held that treaties can create binding obligations for non-parties if they reflect customary international law.¹⁴¹ The Statute of the International Court of Justice in the Charter of the United Nations defines international customary law as a norm or rule of general practice accepted as law by states.¹⁴² Thus, a norm must be practiced by states, and be treated as a legal obligation (*opinio juris*) to be considered customary law. It is argued that there is extensive evidence of *opinio juris* in relation to UDHR, including executive branches of governments affirming the binding character of all or parts of the UDHR and how at least 90 constitutions either mention UDHR, are inspired by it, or have borrowed language from it.¹⁴³ Although the status of UDHR is widely debated, it is argued by some that the UDHR places a strong persuasive legal obligation on governments to protect all the rights it proclaims and to respect its restrictions on the limitations of those rights.¹⁴⁴

3.3.1 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is one of the major international human rights treaties that protects citizen's human rights. By virtue of acceding to the ICCPR in 1993,¹⁴⁵ Nigeria is obliged to uphold the responsibilities on the state in relation to this treaty, and Nigerian citizens, including IDPs are eligible for the rights contained therein. It is established that by ratifying the ICCPR the State Party shall respect and ensure the rights of all individuals in its territory and subject to its jurisdiction without any distinction.¹⁴⁶ Furthermore, the state party should work towards domesticating these rights in national legislation and establish remedies and enforcement of such for violations of

¹⁴⁰ The Vienna Convention on the Law of Treaties, 1155 UNTS 331, 1969 art. 38.

¹⁴¹ Naomi Roht-Arriaza 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law' (1990) *California Law Review* 78(2) at 490.

¹⁴² Charter of the United Nations, 1 UNTS XVI, signed on 24 October 1945 art. 38(1)(b).

¹⁴³ Brian D. Lepard *Customary International Law – A New Theory with Practical Applications* (2010) at 323.

¹⁴⁴ *Ibid* at 327.

¹⁴⁵ United Nations Treaty Collection op cit note 131.

¹⁴⁶ ICCPR supra note 125 art. 2(1).

the rights and freedoms established in the Covenant.¹⁴⁷ Articles 6, 7 and 9 serve to protect physical security under the ICCPR.¹⁴⁸ Importantly, Articles 6 and 7 are non-derogable.¹⁴⁹

3.3.2 International Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) builds on the recognition and prohibition of torture in the UDHR and ICCPR.¹⁵⁰ The convention was created to establish a ‘more effective struggle against torture and other cruel, inhuman or degrading treatment, or punishment throughout the world’.¹⁵¹ The convention as a whole is a tool for the protection of physical security, as its sole focus is to promote physical security and prohibition of torture.

CAT places a responsibility on state parties to ‘take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction’,¹⁵² as well as establishing that torture cannot be justified neither by circumstance nor by an order from ‘a superior officer or a public authority’.¹⁵³ This is an important addition to the prohibition, as it establishes that all individuals, officials, and persons of authority have a personal responsibility not to conduct or condone torture. State parties shall also ensure that all acts of torture are offences under criminal law and punishable under such laws.¹⁵⁴ As a state party ratifying this convention in 2001,¹⁵⁵ all requirements are legally binding on Nigeria.

¹⁴⁷ ICCPR supra note 125 arts. 4, 2(2) and 2(3).

¹⁴⁸ Ibid arts. 6, 7 and 9.

¹⁴⁹ Ibid art. 4(2).

¹⁵⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly, 1465 UNTS 85, adopted on 10 December 1984 and entered into force 26 June 1987 (hereafter CAT) at preamble.

¹⁵¹ Ibid.

¹⁵² Ibid art. 2(1).

¹⁵³ Ibid art. 2(2)-(3).

¹⁵⁴ Ibid art. 4.

¹⁵⁵ United Nations Treaty Collection ‘Human Rights: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en, accessed on 28 August 2017.

3.3.3 Geneva Conventions

The Geneva Conventions and their additional protocols are the basis of international treaties that constitute the rules and limitations of war, and form the basis of IHL.¹⁵⁶ When exploring the right to physical security of IDPs displaced by armed conflict, it is relevant to consider the Geneva Conventions and the rights extended to all individuals in the situations covered thereby. In particular, Common Article 3 and Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War is relevant for the international protection of the right to physical security for IDPs in Nigeria.¹⁵⁷ Common Article 3 is found in all four of the Geneva Conventions, and establishes principles that shall be followed as a minimum in armed conflicts of a non-international nature.¹⁵⁸ As the current armed conflict in north-eastern Nigeria is intrastate and not interstate,¹⁵⁹ Common Article 3 is a source of protection for Nigerian IDPs displaced by conflict. Common Article 3 is also non-derogable. Importantly, Additional Protocol II of 1977 was added to supplement Article 3 and applies to armed conflicts of a non-international nature.¹⁶⁰ Through the additional protocol, civilians are granted fundamental guarantees and protection, and the forced movement of civilians is prohibited.¹⁶¹ As Nigeria acceded to all four Geneva Conventions in 1961, and Additional Protocol II in 1988, they are all legally binding on the state.¹⁶²

3.3.4 United Nations Guiding Principles on Internal Displacement

The basics of the Guiding Principles have previously been discussed in length in Chapter 1 and 2. The aim for the Guiding Principles were to address the specific needs of IDPs worldwide, and identify the relevant rights and guarantees for IDPs under

¹⁵⁶ International Committee of the Red Cross 'The Geneva Conventions 1949 and their Additional Protocols' 29 October 2010 available at <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>, accessed on 08 August 2017.

¹⁵⁷ Geneva Convention (IV) supra note 61 art. 3.

¹⁵⁸ Ibid.

¹⁵⁹ The conflict in Nigeria is one of a non-international character as is an armed group in conflict with government forces. However, there are international elements to the conflict, as Nigeria is cooperating militarily and diplomatically with neighbouring states in order to establish peace and security.

¹⁶⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, adopted 8 June 1977 and entered into force 7 December 1978 (hereafter Additional Protocol II).

¹⁶¹ Ibid arts. 4, 13 and 17.

¹⁶² International Committee of the Red Cross 'Treaties, State Parties and Commentaries' available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=NG, accessed on 28 August 2017.

international law.¹⁶³ The Guiding Principles are however not legally binding. Yet, they have gained substantial international acceptance and authority¹⁶⁴, and they serve as important standards and soft law. In essence, the Guiding Principles establish and confirm that IDPs have the same rights as everyone else.¹⁶⁵ The large number of rights established in the Guiding Principles are found in international conventions, like the ICCPR and the International Convention on Economic, Social and Cultural Rights. Relating to the right to physical security, the Guiding Principles establish that displacement shall not be carried out in a way that violates the right to life, dignity, liberty and security of person.¹⁶⁶ In particular, the right to life, the right to dignity and mental and moral integrity, as well as the right to liberty and security of person are protected in three separate principles in the Guiding Principles.¹⁶⁷ This highlights that IDPs are often in situations where their physical security is threatened, and that physical security is an imminent and significant need to be addressed for IDPs.

3.3.5 Institutional protection

While there is no separate international institution dedicated solely to the protection and assistance of internally displaced people, it does not mean that institutions do not deal with issues of internal displacement. A variety of international non-governmental organisations and intergovernmental organisations coordinate and contribute to humanitarian responses to internal displacement.¹⁶⁸

The UNHCR leads many activities and responses to internal displacement.¹⁶⁹ In the handbook for the protection of IDPs, the UNHCR in collaboration with the Global Protection Cluster and others provides ‘operational guidance and tools to support effective protection responses in situations of internal displacement’.¹⁷⁰ International institutions contribute to the protection of IDPs in various ways through providing emergency shelter, setting up camps, providing food, water and sanitation, as well as

¹⁶³ UN Guiding Principles op cit note 35 at 1.

¹⁶⁴ Cohen op cit note 36 at 495.

¹⁶⁵ UN Guiding Principles op cit note 35 at principle 1.

¹⁶⁶ Ibid at principle 8.

¹⁶⁷ Ibid at principle 10, 11 and 12.

¹⁶⁸ Global Protection Cluster (GPC) ‘Handbook for the Protection of Internally Displaced Persons’ (2010) at 45, available at <http://www.refworld.org/docid/4790cbc02.html>, accessed 9 August 2017; Norwegian Refugee Council ‘Internal displacement’ available at <https://www.nrc.no/what-we-do/speaking-up-for-rights/internal-displacement/>, accessed 6 August 2017.

¹⁶⁹ Global Protection Cluster op cit note 167 at 45.

¹⁷⁰ Ibid at 2.

education and health services.¹⁷¹ Additionally, institutions like the Internal Displacement Monitoring Centre (IDMC) work with issues of internal displacement, but do not focus on the practical assistance and protection of IDPs. They contribute through global monitoring, policy monitoring, influencing, research, and analysis of internal displacement.¹⁷²

International institutions may also provide peacekeeping forces in the protection of IDPs and other affected civilians.¹⁷³ Peacekeeping forces may be an integral part of ensuring the physical security of IDPs. Peacekeeping forces perform duties that secure IDP camps and may ultimately contribute to the opportunity for IDPs to return home.¹⁷⁴ Consequently, such security functions monitor and guard against violations of human rights, and this, in turn, fortifies the rule of law.¹⁷⁵ However, the incorporation of a military response in attempting to protect and assist civilians in armed conflicts is not without challenges. The presence of peacekeeping forces may make humanitarian work more difficult, as it makes the distinction between humanitarian and military action unclear which might further endanger lives.¹⁷⁶

Conclusively, international institutions can contribute on a large scale to the protection and assistance of IDPs. However, the role of international actors is to reinforce, not replace, national responsibility.¹⁷⁷ Additionally, international institutions can only contribute through invitation or acceptance of help by the national government, which proves the importance of institutions being independent, impartial, and maintaining good relations with the national government.

3.4 Regional protection

Regional actors and conventions play an important role in protecting IDPs. This section explores the ACHPR and how it serves to protect the physical security of IDPs in Nigeria. Furthermore, it examines the protection provided under the Kampala

¹⁷¹ Global Protection Cluster op cit note 168 at 45.

¹⁷² Internal Displacement Monitoring Centre (IDMC) 'Our Services' available at <http://www.internal-displacement.org/our-services/>, accessed on 6 August 2017.

¹⁷³ Global Protection Cluster op cit note 168 at 53-57.

¹⁷⁴ Ibid at 55.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid at 56.

¹⁷⁷ Ibid at 9.

Convention, as well as briefly examining ways that ECOWAS attempts to protect IDPs in Africa.

3.4.1 African Charter of Human and Peoples' Rights (ACHPR)

As a state party to the ACHPR since ratifying in 2012, Nigeria is legally bound to uphold the rights and duties established in the charter.¹⁷⁸ The charter establishes, in contrast to other human rights instruments, both rights and duties for all peoples, and that it is important to acknowledge the right to development and the interlink between civil and political rights and economic, social, and cultural rights.¹⁷⁹ IDPs' right to physical security is protected through several articles in the charter. The right to life, the right to dignity and the prohibition of torture, as well as the right to liberty and security of person are all established in the charter.¹⁸⁰

3.4.2 Kampala Convention

The Kampala Convention¹⁸¹, adopted by the African Union in 2009, is the first regional legally binding document regarding the protection and assistance of IDPs.¹⁸² The Convention came into force on 6 December 2012, and is regarded a milestone for internally displaced people as it represents the will and determination of African States to address the issue of internal displacement.¹⁸³ Nigeria ratified the convention in April 2012.¹⁸⁴

It is mentioned in the preamble of the Kampala Convention that its intention is to establish an appropriate legal framework for the protection and assistance of IDPs.¹⁸⁵ Additionally, the objectives of the convention are to 'promote and strengthen regional

¹⁷⁸ African Union 'List of countries that have signed, ratified/acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa' available at https://au.int/sites/default/files/treaties/7796-sl-african_union_convention_for_the_protection_and_assistance_of_internally.pdf, accessed on 08 August 2017.

¹⁷⁹ ACHPR supra note 129 at preamble.

¹⁸⁰ Ibid arts. 4, 5 and 6.

¹⁸¹ Hereafter the Convention. The Kampala Convention is available at https://au.int/sites/default/files/treaties/7796-treaty-0039_-_kampala_convention_african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_e.pdf, accessed on 28 August 2017.

¹⁸² Schreier op cit note 67 at 74.

¹⁸³ Human Rights Council Report of the Special Rapporteur Chaloka Beyani on the Human Rights of Internally Displaced Persons (2015) UN Doc A/HRC/26/33 para 27.

¹⁸⁴ African Union op cit note 177.

¹⁸⁵ Kampala Convention supra note 88 at preamble.

and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement, as well as provide for durable solutions'.¹⁸⁶ Furthermore, the objectives provide for the duties of State Parties, armed groups, non-state actors, organisations and civil society in their obligation to prevent displacement, as well as protect and assist IDPs.¹⁸⁷

Generally, the Kampala Convention can be divided into three different categories of protection: rules for prevention and prohibition of arbitrary displacement, establishing and respect for IDPs rights, and provisions of assistance to IDPs.¹⁸⁸ The obligations and responsibilities include, *inter alia*, the respect and protection of human rights, ensuring responsibility for acts of arbitrary displacement, accountability of non-state actor's violations of domestic and international law, and assistance to IDPs by meeting their basic needs and 'promote self-reliance and sustainable livelihoods'.¹⁸⁹ In particular, state parties are obliged domesticate the provisions of the convention, adopt measures as necessary, allocate funds and establish an authority with the duty of coordinating efforts aimed at ensuring the security of IDPs.¹⁹⁰

The convention exhaustively addresses the issue of arbitrary displacement as a cause of displacement. Article 4 obligates state parties to prevent and avoid conditions that might lead to arbitrary displacement.¹⁹¹ Additionally, the convention establishes that everyone 'have a right to be protected against arbitrary displacement',¹⁹² and further incorporates a list of prohibited categories of arbitrary displacement.¹⁹³ Arbitrary displacement is not limited to this list, and Article 4(4)(h) serves as a safety net, also ensuring the prohibition of 'displacement caused by any act, event, factor or phenomenon of comparable gravity' to the other categories are also prohibited.¹⁹⁴

¹⁸⁶ Kampala Convention supra note 88 art. 2(a).

¹⁸⁷ Ibid arts. 2(d) and 2(e).

¹⁸⁸ Laurence Juma 'The narrative of vulnerability and deprivation in protection regimes for the internally displaced persons (IDPs) in Africa: An appraisal of the Kampala Convention' (2012) *Law, Democracy and Development* 16 at 231.

¹⁸⁹ Kampala Convention supra note 88 art. 3(1)(k).

¹⁹⁰ Ibid art. 3(2).

¹⁹¹ Ibid art. 4.

¹⁹² Ibid art. 4(4).

¹⁹³ Ibid art. 4(4)(a)-(h).; See section 2.4 of this thesis for further details on arbitrary displacement.

¹⁹⁴ Ibid art. 4(4)(h).

Although the convention asserts responsibility and obligations on non-state actors and international organisations, it clearly establishes that the state bears the primary duty and responsibility to protect and provide assistance to IDPs.¹⁹⁵ International organisations and humanitarian agencies are to conform to international and national laws in assisting and protecting IDPs, in addition to respecting the rights of IDPs established through international law.¹⁹⁶ Furthermore, state parties shall protect the rights of IDPs.¹⁹⁷ A state shall refrain from any acts which threaten the physical security of IDPs.¹⁹⁸ Amongst other things, this is inclusive of any infringements of IHL, arbitrary killings and detentions, abductions, as well as a prohibition on torture and sexual violence.¹⁹⁹ State parties must also ensure that IDPs live in satisfactory conditions of safety, dignity and security, and provide humanitarian assistance and special protection and assistance for IDPs with special needs.²⁰⁰

Important to this dissertation is Article 7 of the Convention, which sets out the protection and assistance to IDPs in situations of armed conflict. In addition to reconfirming that the protection and assistance to IDPs shall be governed by international law and IHL, this article establishes that members of armed groups shall be held criminally responsible for acts violating IDPs rights under international and national law.²⁰¹ Moreover, Article 7 lists several acts that armed groups are prohibited from conducting, to ensure in particular the physical security and rights of IDPs.²⁰²

Controversially, the Kampala Convention also places obligations on the AU. It establishes that the AU has the right to intervene in a member state under grave circumstances of war crimes, genocide, and crimes against humanity.²⁰³ This places a legal international responsibility to protect civilians in the AU. Although the principle of sovereignty is established and protected in the convention,²⁰⁴ this obligation placed

¹⁹⁵ Kampala Convention *supra* note 88 art. 5(1).

¹⁹⁶ *Ibid* art. 6.

¹⁹⁷ *Ibid* art. 9.

¹⁹⁸ *Ibid* art. 9(1).

¹⁹⁹ *Ibid* art. 9(1)(b)-(d).

²⁰⁰ *Ibid* art. 9(2)(a)-(c).

²⁰¹ *Ibid* art. 7(3)-(4).

²⁰² *Ibid* art. 7(5).

²⁰³ *Ibid* art. 8(1).

²⁰⁴ *Ibid* art. 7(2).

on the AU limits the scope of state sovereignty. Furthermore, the AU is also expected to support and assist member states in the protection and assistance of IDPs.²⁰⁵

In essence, the Kampala Convention is a tool to protect IDPs' right to physical security. It is structured as a tool to prevent arbitrary displacement, respect IDP rights, and provide assistance to IDPs. However, Articles 3, 5, 7 and 9 particularly address important obligations and responsibilities in relation to protecting IDPs physical security.

Although the Kampala Convention is a huge step towards the promotion and respect for IDPs rights as it provides a solid framework for protection and assistance, challenges still remain.²⁰⁶ African governments were pioneers in the implementation of national law and policies derived from the Guiding Principles,²⁰⁷ yet the implementation and enforcement of these remains an issue. The convention elaborates on many aspects where the Guiding Principles are lacking, however one impression that cannot go unnoticed is that the convention is a mere attempt to cover international standards with some regional aspects.²⁰⁸ It has been argued that African states are often eager to establish international and regional normative standards, to then ignore or deliberately frustrate those same standards at the domestic level.²⁰⁹ Whether this is the case with the Kampala Convention will be explored further in Chapters 4 and 5 of this dissertation.

3.4.3 Economic Community of West African States (ECOWAS)

ECOWAS consists of 15 regional member states, with the mandate to promote economic integration in all fields of activities of the constituting countries.²¹⁰ Regional organisations like ECOWAS become important in situations of armed conflict, as they often spill into neighbouring countries which can cause regional instability.²¹¹

²⁰⁵ Kampala Convention supra note 88 art. 8(3).

²⁰⁶ Human Rights Commission Report op cit note 183 para 29.

²⁰⁷ Ibid para 35.

²⁰⁸ Juma op cit note 188 at 231.

²⁰⁹ Ibid at 238.

²¹⁰ Economic Community of West African States 'Basic Information' available at <http://www.ecowas.int/about-ecowas/basic-information/>, accessed 09 August 2017.

²¹¹ Roberta Cohen 'The Role of Regional Organisations, ECOWAS' The Brookings Institution 30 September 2002, available at <https://www.brookings.edu/on-the-record/the-role-of-regional-organizations-ecowas/>, accessed on 08 August 2017.

In 2011, ECOWAS organised, with UNHCR, the first ministerial conference on humanitarian assistance and IDPs in West Africa.²¹² The main objective was to ensure speedy ratification and swift implementation of the Kampala Convention by ECOWAS member states.²¹³ When assessing the role of ECOWAS as a regional organisation regarding internal displacement, Roberta Cohen argued in 2002 that ECOWAS could play an important role through raising awareness and addressing the issue of internal displacement.²¹⁴ Furthermore, Cohen argued that ECOWAS could be essential in promoting the Guiding Principles as a framework for national laws and policies, as well as integrating internal displacement into all relevant programs and appointing a focal point on migration that could collect data, monitor and report on situations of internal displacement.²¹⁵ Cohen claimed that this would help member states better fulfil their own commitments to IDPs. Fast forward to the work ECOWAS is doing today, it is very similar to what Cohen described.

In 2015, the department held several awareness missions in different member states to raise awareness on the importance of ratifying, owning and implementing the Kampala Convention.²¹⁶ Furthermore, they work to raise awareness of the links between the Kampala Convention and ECOWAS Humanitarian Policy and its action plans, as a tool for implementing the convention.²¹⁷

Through its military department, ECOMOG, the organisation has become involved in efforts on the ground to promote and create security for civilian populations, including IDPs.²¹⁸ Yet, it has been acknowledged by member states that ECOMOG forces, like all other peacekeeping forces, could benefit from training in IHRL and IHL to further enhance the protection of IDPs.²¹⁹ ECOWAS has also addressed other issues affecting displacement, like food security. In December 2016, a special session was held under

²¹² Economic Community of West African States ‘Stakeholders undertake to support implementation of the Kampala Convention’ 23 June 2015, available at <http://www.ecowas.int/stakeholders-undertake-to-support-implementation-of-the-kampala-convention/>, accessed on 08 August 2017 (hereafter ECOWAS).

²¹³ Ibid.

²¹⁴ Cohen op cit note 211.

²¹⁵ Ibid.

²¹⁶ ECOWAS op cit note 212.

²¹⁷ Ibid.

²¹⁸ Cohen op cit note 211.

²¹⁹ Ibid.

the leadership of ECOWAS to address the critical food and nutrition situation in North-Eastern Nigeria. This issue severely affects IDPs in that region.²²⁰

Through various programs, advocacy, and raising awareness, ECOWAS plays an important role in promoting IDPs rights and security. Notably, ECOWAS continues to play an important role in securing the rapid ratification and implementation of the Kampala Convention, in order to promote peace, security, and development.²²¹

To conclude, this chapter explored the national, international, institutional, and regional framework in place to protect the rights of IDPs. Through focusing on the right to physical security, this chapter identified national, international and regional legal frameworks in place to protect IDPs. Importantly, IDPs are citizens of their state of origin, and therefore they are subject to national legislation, as well as international treaties and covenants ratified by their state of origin. The next chapter will conduct a case study on Nigeria and explore violations of IDPs' right to physical security based on the legal frameworks outlined in the current chapter.

²²⁰ Economic Community of West African States 'Food security stakeholders call for immediate action to address acute food and nutrition insecurity in North-East Nigeria' 12 December 2016, available at <http://www.ecowas.int/the-food-crisis-prevention-network-network-32nd-annual-meeting-abuja-nigeria-12th-december-2016/>, accessed on 08 August 2017.

²²¹ Elizabeth Ferris and Chareen Stark 'Internal Displacement in West Africa: A Snapshot' (2012) Brookings-LSE Project on Internal Displacement at 21, available at https://www.brookings.edu/wp-content/uploads/2016/06/01_ecowas_ferris_stark.pdf, accessed on 08 August 2017.

4. Case study: IDPs in Nigeria

This chapter explores the causes for displacement in the current north-eastern Nigerian context. After assessing the current situation in north-eastern Nigeria, it examines violations of IDPs' right to security through looking at the rights and mechanisms accounted for in Chapter 3.

4.1 Causes of displacement

In the decades after its independence Nigeria have been turbulent, with multiple military coups, the Biafra war, political tensions, and a string of military regimes.²²² As such, it is not surprising that the country has been troubled with conflict along the lines of ethnicity and religion, and educational inequality, corruption, economic imbalance, and distribution of resources have been causes of conflict. Specifically, the north-east region of the country is characterised by 'extreme poverty, harsh climatic conditions, poor infrastructure, limited access to basic services, and epidemic outbreaks'.²²³ These issues are further fuelled by armed conflict and displacement. Consequently, this established a severe need for protection and assistance for the affected communities, including particularly IDPs.²²⁴

This dissertation explores the current armed conflict between Boko Haram and the Nigerian government²²⁵ as a cause of displacement in the north-eastern states, as stipulated as a cause for arbitrary displacement in the Guiding Principles and Kampala Convention.²²⁶ The Kampala Convention also sets out generalised violence and human rights violations as a separate cause for displacement.²²⁷ This will be reviewed in this chapter, but only in relation to the armed internal conflict.

²²² Joe A. Alimonah, Francis Onaiyekan & Frank Ojadi *500 Remarkable Events in Nigeria's History 1960-2010* (2005) at 23-25.

²²³ United Nations High Commissioner for Refugees 'Nigeria Regional Refugee Response Plan – January-December 2017' (2016) at 7, available at <http://reporting.unhcr.org/sites/default/files/ga2017/2017%20Nigeria%20Regional%20Refugee%20Response%20Plan%20-%20Jan-Dec%202017.pdf?v2>, accessed on 24 August 2017.

²²⁴ Ibid.

²²⁵ Heidelberg Institute for International Conflict Research 'Conflict Barometer 2016' (2017) Report No. 24 at 81 (hereafter HIIK).

²²⁶ UN Guiding Principles op cit note 35 at principle 6(2)(b); Kampala Convention supra note 88 art. 4(4)(b).

²²⁷ Ibid art. 4(4)(d).

Boko Haram is a militant Islamist group formed in the Borno State, northeast of Nigeria.²²⁸ The group, which started in 2003 and was considered an armed group struggling against the government in 2009.²²⁹ As a fragmented group, the specific goals and aims behind Boko Haram's attacks may vary widely.²³⁰ However, an goal expressed by several leaders is to overthrow the Nigerian government and establish a puritanical Islamic state in the region.²³¹ Since 2009, the group has carried out violent attacks targeting civilians, authorities, politicians, and traditional and religious leaders through drive-by shootings and bombings of police stations, bus stations, schools, churches, markets, and international institutions mainly in north-eastern Nigeria.²³² However, the conflict has also spilled over into neighbouring countries, including Cameroon, Chad, and Niger.²³³

Nigeria is a complex country with multi-layered issues such as socio-economic, development, political, and environmental issues. Root causes of the current crisis include economic neglect, poor education, social inequality, deficits in good governance, unemployment, climate change, poverty, and deprivation.²³⁴ These factors have contributed to create fertile grounds for Boko Haram to emerge in the north-eastern regions.²³⁵ The violence displaced 1.8 million people in 2016,²³⁶ and it was reported more than 500 000 new displacements by conflict and violence.²³⁷ The total number of IDPs displaced by conflict and violence by the end of 2016 was estimated to be 1,995,000 million people.²³⁸ At the end of 2015, The Internal Displacement Monitoring Centre assessed that 85 per cent of Nigeria's IDPs were

²²⁸ Emilie Oftedal 'Boko Haram – An Overview' (2013) Norwegian Defence Research Establishment (FFI) Report 2013/01680 at 3.

²²⁹ Mike Smith *Inside Boko Harams Unholy war* (2015) at xiv.

²³⁰ Oftedal op cit note 228 at 18.

²³¹ Uppsala Conflict Data Program 'Jama'atu Ahlis Sunna Lidda'awati wal-Jihad' available at <http://ucdp.uu.se/#actor/1051> accessed on 16 August 2017; HIIK op cit note 225 at 81.

²³² Uppsala Conflict Data Program 'Jama'atu Ahlis Sunna Lidda'awati wal-Jihad' available at <http://ucdp.uu.se/#/onesided/2332>, accessed on 16 August 2017; HIIK op cit note 225 at 81; Human Rights Council Report of the Special Rapporteur Chaloka Beyani on the Human Rights of Internally Displaced Persons (2017) UN Doc A/HRC/35/27/Add.1 at 5 para 8.

²³³ HIIK op cit note 225 at 81.

²³⁴ Human Rights Council op cit note 232 at 6 para 14.

²³⁵ IDMC op cit note 7; Human Rights Council op cit note 232 at 6 para 14.

²³⁶ HIIK op cit note 225 at 81.

²³⁷ IDMC op cit note 3 at 13.

²³⁸ Ibid at 24.

displaced as a result of Boko Haram's attacks.²³⁹ In the north-eastern states, 99.8 per cent of IDPs were estimated to be displaced due to the conflict with Boko Haram as of November 2016.²⁴⁰ Consequently, the majority of IDPs in Nigeria are displaced due to the armed conflict with Boko Haram, however intercommunal clashes due to religious and ethnic tensions as well as natural disasters and mass evictions also contribute to the total amount of IDPs in Nigeria.²⁴¹

Borno, Adamwa, and Yobe are the states worst affected by the armed conflict, and the needs for protection is acute. The constantly changing security situation also impeded humanitarian access to the IDPs, leaving many trapped by the conflict and reporting famine like conditions.²⁴²

In regions troubled by conflict and violence in Africa, a form of circular cross-border displacement pattern has occurred.²⁴³ This happens when people flee back and forth in response to the development in hostilities in the conflict. This has been particularly prevalent in areas with regional conflict and multiple borders in close proximity to each other.²⁴⁴ In the case of Nigerian IDPs, many find themselves not only fleeing within the country but also crossing the border to neighbouring countries, repeatedly attempting to escape attacks by Boko Haram and the heavy-handed military response to the group.²⁴⁵ In these situations, it is not only difficult to track the flow of IDPs and refugees due to the complex situation, but the distinction between the two groups of displaced peoples fades.

IDPs in north-eastern Nigeria live in host communities as well as camps. As the military offensive from the state increased in 2015 in an attempt to recover territories from Boko Haram, the group was pushed into rural areas, resulting in a new wave of

²³⁹ Internal Displacement Monitoring Centre 'Nigeria IDP figures analysis' available at <http://www.internal-displacement.org/sub-saharan-africa/nigeria/figures-analysis>, accessed on 18 August 2017 (hereafter IDMC).

²⁴⁰ United Nations Office for the Coordination of Humanitarian Affairs 'Nigeria: Displacement – Key Figures' 15 November (2016) available at http://reliefweb.int/sites/reliefweb.int/files/resources/ocha_nga_displacement_snapshot_15112016.pdf accessed on 18 August 2017 (hereafter OCHA).

²⁴¹ IDMC op cit note 7.

²⁴² IDMC op cit note 3 at 13.

²⁴³ Ibid at 56.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

large-scale displacement.²⁴⁶ Many of these people were displaced to military-run camps.²⁴⁷ Military commanders have stated that the military do not administrate the camps, they only manage the security and information-gathering.²⁴⁸ However, they are indeed responsible for the delivery of humanitarian assistance in newly recovered areas, partly due to the security situation and the absence of other humanitarian partners in conflict affected areas.²⁴⁹ The United Nations Special Rapporteur on the human rights of internally displaced persons commented in his report after his mission to Nigeria in 2016 on the importance of camps being of a civilian character and that the transition to a civilian administration should occur swiftly.²⁵⁰ This is in line with the importance of humanitarian actors and efforts to be impartial, independent, and neutral in conflicts, as failing to do so could put both humanitarian actors' and IDPs' lives in danger.

As of August 2016, the National Emergency Management Agency (NEMA) was managing 15 official IDP camps containing more than 300,000 IDPs in areas around the Borno State.²⁵¹ Additionally, there are several non-official camps and informal settlements. The conditions in these camps have quickly deteriorated as the humanitarian assistance received is insufficient.²⁵² Additionally, it is reported that 68 per cent of camps and camp-like sites are without official management in Borno, Adamawa, and Yobe.²⁵³ Yet, the majority of IDPs registered live in host communities, and not camps.²⁵⁴ At the time of the Special Rapporteur's visit to the north-eastern states, approximately 640,000 IDP were living in the Madiguri City area, 81 per cent of which were living in host communities with no coordinated or coherent out-of-camp humanitarian strategies in place.²⁵⁵

As a result of the current conflict and humanitarian crisis, the civilian population is bearing the brunt of the Boko Haram insurgency in Nigeria.²⁵⁶ The complex and

²⁴⁶ Human Rights Council op cit note 232 at 5 para 10.

²⁴⁷ Ibid.

²⁴⁸ Ibid at 8 para 22.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid at 5-6 para 11.

²⁵² Ibid at 5 para 10.

²⁵³ OCHA op cit note 240.

²⁵⁴ Human Rights Council op cit note 232 at 7 para 21.

²⁵⁵ Ibid at 6 para 12.

²⁵⁶ Ibid at 5 para 11.

continuously developing situation accompanied by armed conflict and attacks creates fertile grounds for human rights violations, and threatens IDPS' right to physical security.

4.2 Violations of the right to physical security

Many of the IDPs in Nigeria are vulnerable and often subjected to human rights violations. This section identifies and provides examples of how the Nigerian state and Boko Haram threaten and violate the right to physical security. The right to physical security will be analysed through categorising human rights violations under the rights to life; freedom from torture and other cruel, inhumane and degrading treatment and punishment; and to liberty and security of person.²⁵⁷ The evidence of these violations relies on reports from non-governmental organisations, as well as reports from the Human Rights Council and news reports, not empirical research. The author has taken the view that these reports are accurate, and they are used because they are based on qualitative research through interviews and extensive investigations. However, the author is aware that there is an element of bias in all news reporting, as well as the possibility of inaccuracy in qualitative research.

4.2.1 Right to life

The right to life is established in several international treaties, as well as in the Nigerian Constitution.²⁵⁸ Yet, on several occasions the Nigerian state and Boko Haram have been responsible for violations of IDPs' right to life, and thus their right to physical security.

In January 2017, it was reported that the Nigerian military mistakenly bombed a camp for IDPs in their offensive against Boko Haram.²⁵⁹ The area was controlled by the

²⁵⁷ As established by ICCPR supra note 125 arts. 6, 7 and 9; The Constitution supra note 132 arts. 33, 34 and 41; UDHR supra note 120 arts. 3, 4 and 5; ACHPR supra note 129 arts. 4, 5 and 6; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3, 27, 32, 37 and 75; Additional Protocol II supra note 160 art. 4; CAT supra note 150 art. 2; UN Guiding Principles op cit note 35 principles 10, 12 and 14.

²⁵⁸ The Constitution supra note 132 art 33; UDHR supra note 120 art. 3; ICCPR supra note 125 art. 6; ACHPR supra note 129 art. 4; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 art. 3; Additional Protocol II supra note 160 art. 4.

²⁵⁹ Ben Quinn & Emmanuel Akinwotu 'Nigeria air strike: dozens dead as camp for internally displaced people hit by mistake' *The Guardian* 18 January 2017, available at <https://www.theguardian.com/world/2017/jan/17/nigeria-military-jet-mistakenly-bombs-displaced-families-camp-boko-haram>, accessed on 20 August 2017.

Nigerian army,²⁶⁰ and should have been a safe place for civilians to seek protection. Instead, between 50 and 100 people were reported dead and at least 200 people wounded by the attack.²⁶¹ Although this incident was considered a mistake, it is still in violation of the state's obligation to uphold IDPs' right to life as protected by IHRL and IHL.²⁶² Additionally, the incident is a violation of the state obligations established in the Kampala Convention,²⁶³ and in particular its obligation to protect the rights of IDPs by refraining from and preventing violations of IHRL.²⁶⁴ Furthermore, the principle of due diligence places a responsibility on states to take appropriate measures to avoid violations. The principle of due diligence is simply explained as taking 'reasonable steps' taken to avoid committing an offence.²⁶⁵ This is important in international law as it is applicable to different facts and circumstances.²⁶⁶ The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework was presented for consideration by the Special Representative to the Human Rights Council in 2011,²⁶⁷ and the Human Rights Council endorsed these principles.²⁶⁸ The principles establish that the state 'must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication'.²⁶⁹ Thus, it can be argued that it is generally accepted that the state has a responsibility to prevent, investigate and punish violations of human rights.

²⁶⁰ Quinn & Akinwotu op cit note 259.

²⁶¹ Ibid.

²⁶² The Constitution supra note 132 art 33; UDHR supra note 120 art. 3; ICCPR supra note 125 art. 6; ACHPR supra note 129 art. 4; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 art. 3; Additional Protocol II supra note 160 arts. 4 and 13.

²⁶³ Kampala Convention supra note 88 arts. 5(10) and 7(3).

²⁶⁴ Ibid art. 9(c).

²⁶⁵ Oxford Dictionaries 'Due Diligence' available at https://en.oxforddictionaries.com/definition/due_diligence, accessed on 3 September 2017.

²⁶⁶ Robert P. Jr. Barnidge 'The Due Diligence Principle under International Law' (2006) *International Community Law Review* 8(1) at 121.

²⁶⁷ Human Rights Council Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (2011) UN Doc A/HRC/17/31.

²⁶⁸ Human Rights Council Human rights and transnational corporations and other business enterprises (2011) UN Doc A/HRC/RES/17/4.

²⁶⁹ Human Rights Council op cit note 267 at 6.

Security forces all over Nigeria have been accused of a variety of abuses including extrajudicial killings in the name of national security.²⁷⁰ Particularly after the Nigerian military recaptured territory from Boko Haram in 2015 the number of reports of extrajudicial killings of suspected Boko Haram members increased.²⁷¹ When recapturing towns from Boko Haram, it has been reported that anyone who was not cleared as a resident, and young men in general, would be shot and killed.²⁷² In a report, Amnesty International claim that their research ‘shows that extrajudicial executions of Boko Haram suspects were a routine practice for the Nigerian military’.²⁷³ This indicates a clear violation of the right to life, as well as grave breaches of IHL.²⁷⁴ The conduct of the Nigerian military poses a real threat to IDPs’ right to physical security. Many IDPs live in host communities and could be seen as non-residents and thus suspected as Boko Haram members without any real evidence of them being so. Consequently, IDPs and especially young men in the north-eastern regions, who are already displaced due to the threats to their physical security by armed conflict and violence, avoid locations where IDPs are in fear of arrest and detention.²⁷⁵ This naturally causes mistrust in the security forces that are implemented to create peace and stability in the region.

Boko Haram’s attacks in general serve as grave threats and violations to IDPs’ right to life and physical security. Many of those displaced by previous Boko Haram attacks continue to live in fear of new attacks in host communities or camps. Boko Haram has increasingly targeted IDPs in their attacks on the civilian population.²⁷⁶ Although the government declared that the group was defeated in 2016, Boko Haram has continued

²⁷⁰ Human Rights Watch ‘World Report 2017’ ISBN-13: 978-1-60980-734-4 at 451, available at https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf, accessed on 24 August 2017.

²⁷¹ Amnesty International ‘Stars on their shoulders, blood on their hands – War Crimes Committed by the Nigerian Military’ (2015) Report AFR 44/1657/2015 at 40, available at <https://www.amnesty.org/en/documents/afr44/2498/2015/en/>, accessed on 24 August 2017.

²⁷² Ibid at 40-41.

²⁷³ Ibid at 41.

²⁷⁴ The Constitution supra note 132 art 33; UDHR supra note 120 art. 3; ICCPR supra note 125 art. 6; ACHPR supra note 129 art. 4; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3, 75 and 147; Additional Protocol II supra note 160 art. 4.

²⁷⁵ Human Rights Council Report op cit note 232 at 18 para. 72.

²⁷⁶ Agency Report ‘Suicide attacks: NEMA urges Borno residents, IDPs to be more vigilant’ *Premium Times* 30 October 2016, available at <http://www.premiumtimesng.com/regional/north-east/214052-suicide-attacks-nema-urges-borno-residents-idps-vigilant.html>, accessed on 21 August 2017.

to carry out attacks.²⁷⁷ In July 2017, two IDP camps in Maiduguri were attacked by suicide bombers, leaving at least eight people killed and fifteen wounded.²⁷⁸ In August 2017, another suicide attack outside an IDP camp in Borno killed dozens.²⁷⁹ Additionally, as the Nigerian military intensify their offensive against Boko Haram, the group seem to increasingly attack soft targets, like places where civilians are sheltering.²⁸⁰ The constant threat of attacks and insecurity is also affecting the ability to provide humanitarian assistance to IDPs, as threats from armed groups causes international organisations to temporarily suspend their operations because of the high security risks.²⁸¹ The constant threat of attacks and the deadliness of Boko Haram attacks are direct violations of IDPs' right to physical security.²⁸² Furthermore, Boko Haram has consistently directed their attacks at civilian and public targets such as schools, markets and churches which has contributed to cause displacement and continues to threaten the physical security of IDPs. In addition to violations of the right to life by Nigerian security forces and Boko Haram, violations of the right to freedom from torture and other forms of cruel, inhuman and degrading treatment or punishment also pose a significant threat to IDPs physical security.

4.2.2 Right to freedom from torture

Both the Nigerian military and Boko Haram have been accused of acts of torture and other forms of cruel, inhuman and degrading treatment and punishment. Importantly, reports of torture and other types of ill-treatment in the north-east of Nigeria have escalated as the conflict with Boko Haram has intensified.²⁸³ In 2016, 13 out of the 26 sites assessed in Borno reported physical violence, including abuse, torture, and mutilation in the settlements for IDPs.²⁸⁴ Evidence compiled by Human Rights Watch

²⁷⁷ Al Jazeera 'IDP camps in Nigeria 'hit by suicide bombers'' Al Jazeera 24 July 2017, available at <http://www.aljazeera.com/news/2017/07/idp-camps-nigeria-hit-suicide-bombers-170724090127650.html>, accessed on 21 August 2017.

²⁷⁸ Ibid.

²⁷⁹ Norwegian Refugee Council 'Attacks increasingly targeting displaced people in Nigeria' 16 August 2017, available at <https://www.nrc.no/news/2017/august/attacks-increasingly-targeting-displaced-people-in-northeast-nigeria/>, accessed on 21 August 2017 (hereafter NRC).

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² The Constitution *supra* note 132 art 33; UDHR *supra* note 120 art. 3; ICCPR *supra* note 125 art. 6; ACHPR *supra* note 129 art. 4; Kampala Convention *supra* note 88 art. 9; Geneva Convention (IV) *supra* note 61 art. 3; Additional Protocol II *supra* note 160 arts. 4 and 13.

²⁸³ Amnesty International *op cit* note 271 at 90.

²⁸⁴ Protection Sector Working Group Nigeria & UNHCR 'Rapid Protection Assessment Report' (2016) at 6, available at

suggests that both state agents and Boko Haram may have committed crimes against humanity.²⁸⁵

In a report on security forces and the use of torture, previous detainees testify to being subjected to a variety of methods of torture, ‘including beatings, shootings, nail and teeth extractions, rape and sexual violence, as well as conditions in detention that amount to ill-treatment’.²⁸⁶ These acts are direct violations of Nigerian obligations towards IHL and IHRL.²⁸⁷ Many detainees die as a result of the treatment,²⁸⁸ and at least 7000 had died in military custody by 2015.²⁸⁹ As the military conduct arbitrary arrests and detention, there is no doubt that the acts of the security forces in north-eastern Nigeria threatens the right to physical security for IDPs. During raids in communities, often after a Boko Haram attack, members of the security forces have executed men, arbitrarily arrested or beaten members of the community, burned houses, shops and cars, as well as stolen money and participated in rape and sexual assault.²⁹⁰ Not only are this grave violations of international human rights and IHL, it is also a violation of the Kampala Convention as the security forces are directly participating in acts that arbitrary displaces people by burning houses and ruining livelihoods.²⁹¹

In IDP camps, women and girls are particularly vulnerable to rape and sexual exploitation. It is alleged that Nigerian government officials and authorities have raped and sexually abused displaced women and girls.²⁹² It is reported that more than half of 400 IDPs in Adamawa, Borno, and Yobe believed that women and girls were sexually abused by camp officials, including ‘camp leaders, vigilante groups, policemen, and

http://reliefweb.int/sites/reliefweb.int/files/resources/rapid_protection_assessment_report_pswg_borno_may_2016.pdf, accessed on 24 August 2017 (hereafter PSWGN & UNHCR).

²⁸⁵ Daniel Williams & Eric Gutschuss ‘Spiraling violence - Boko Haram Attacks and Security Force Abuses in Nigeria’ (2012) Human Rights Watch Report ISBN: 1-56432-951-8 at 76.

²⁸⁶ Amnesty International op cit note 271 at 90.

²⁸⁷ The Constitution supra note 132 art 34; UDHR supra note 120 art. 5; ICCPR supra note 125 art. 7; ACHPR supra note 129 art. 5; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 art. 3, 27, 32 and 75; Additional Protocol II supra note 160 art. 4; CAT supra note 150 art 2.

²⁸⁸ Amnesty International op cit note 271 at 91.

²⁸⁹ Ibid at 4.

²⁹⁰ Williams & Gutschuss op cit note 285 at 58.

²⁹¹ Kampala Convention supra note 88 arts. 4(1) and 4(4).

²⁹² Human Rights Watch ‘Nigeria: Officials abusing displaced women, girls’ 31 October 2016 available at <https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls>, accessed on 21 August 2017 (hereafter HRW).

soldiers'.²⁹³ Many of these women were coerced with promises of marriage and material and financial assistance, as well as being drugged before being raped.²⁹⁴ The camps see a high number of pregnancies, including amongst young girls, and as a result forced or coerced marriages are increasing to prevent the stigma and discrimination relating to pregnancy outside of marriage.²⁹⁵ Several women were abandoned when falling pregnant, and left with their children to face discrimination, abuse, and stigmatisation from other camp residents.²⁹⁶ Consequently, many of these women and girls do not report the abuse as they feel powerless, and fear retaliation or social stigma which further leads to a culture of impunity for the perpetrators.²⁹⁷

In many camps, food distribution is under the authority of males, contributing to conditions of sexual abuse due to the shortage of food.²⁹⁸ The vulnerability of women and girls is exacerbated due to the sporadic supply of essential goods such as food, water, clothing and medicine, as well as the limited movement within the IDP settlements.²⁹⁹ In a Rapid Assessment Protection Report in Borno in 2016, 14 out of 26 sites assessed – including formal camps, informal camps, and host communities – reported sexual exploitation/survival sex to access food, get permission to leave camps, or money.³⁰⁰ Furthermore, 12 out of 26 sites reported rape or sexual abuse.³⁰¹ In particular, a lack of lighting in sanitary areas and their location away from safe areas reportedly made women and girls more vulnerable.³⁰² Consequently, women and girls are victimised repeatedly through the abuse they experience by Boko Haram and due to being displaced, as well as being attacked and abused by those who are appointed to protect them.³⁰³ As a result, the Nigerian government is in violation of its international obligations to IHRL and IHL,³⁰⁴ as well as their obligations in terms of

²⁹³ HRW op cit note 292.

²⁹⁴ Ibid.

²⁹⁵ Human Rights Council op cit note 232 at 13 para 48.

²⁹⁶ HRW op cit note 292.

²⁹⁷ Ibid; Human Rights Council op cit note 232 at 14 para 51.

²⁹⁸ Human Rights Council op cit note 232 at 13 para 48.

²⁹⁹ HRW op cit note 292.

³⁰⁰ PSWGN & UNHCR op cit note 284 at 5.

³⁰¹ Ibid at 6.

³⁰² Human Rights Council op cit note 232 at 13 para 49

³⁰³ HRW op cit note 292.

³⁰⁴ UDHR supra note 120 art. 5; ICCPR supra note 125 art. 7; ACHPR supra note 129 art. 5; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3, 27 and 32; Additional Protocol II supra note 160 art. 4; CAT supra note 150 art. 2.

the Kampala Convention by failing to provide adequate humanitarian assistance that allows women and girls to become vulnerable to sexual abuse and exploitation.³⁰⁵

Boko Haram has over the years abducted hundreds of women and girls.³⁰⁶ Some 2000 women and girls are believed to be abducted between January 2014 and April 2015 alone.³⁰⁷ By refusing to convert to Islam after capture, girls and women interviewed by Human Rights Watch described how they were used and abused by Boko Haram in various ways.³⁰⁸ Women and girls incurred ‘physical and psychological abuse; forced labour; forced participation in military operations, including carrying ammunition or luring men into ambush; forced marriage to their captors; and sexual abuse, including rape’.³⁰⁹ In particular forced labour, forced marriage and sexual abuse violates IDPs’ right to freedom from torture and other cruel, inhuman and degrading treatment and punishment.³¹⁰ It is reported that women who were yet to be ‘married’ were sexually abused.³¹¹ However, some preventative efforts were allegedly made by commanders to ‘protect women against sexual abuse before “marriage”’.³¹² Furthermore, numerous girls and women were sexually abused and raped after ‘marriage’ during their captivity in Boko Haram’s camps.³¹³ However, the rape and sexual abuse of women and girls in Boko Haram is suspected to be severely underreported due to ‘a culture of silence, stigma, and shame around sexual abuse’.³¹⁴

³⁰⁵ Kampala Convention supra note 88 arts. 5(6), 7(3) and 9.

³⁰⁶ Mausi Segun & Samer Muscati “Those Terrible Weeks in their Camp” Boko Haram Violence against Women and Girls in Northeast Nigeria’ (2014) Human Rights Watch Report ISBN: 978-1-6231-32033 at 1.

³⁰⁷ Human Rights Council op cit note 232 at 14 para 53.

³⁰⁸ Segun & Muscati op cit note 306 at 2.

³⁰⁹ Ibid.

³¹⁰ The Constitution supra note 132 art 34; UDHR supra note 120 arts. 4 and 5; ICCPR supra note 125 art. 7; ACHPR supra note 129 art. 5; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3, 27 and 32; Additional Protocol II supra note 160 art. 4; CAT supra note 150 art 2.

³¹¹ The word marriage or married is put in quotation marks as that is how it is written in the source. Human Rights Watch reports that many of the women were already married prior to abduction, the women did not give consent and the ceremony was described as the camp commander reading ‘out words in Arabic and announcing that they were now wedded’. See Segun & Muscati op cit note 306 at 30.

³¹² Segun & Muscati op cit note 306 at 33.

³¹³ Ibid at 33-35.

³¹⁴ Ibid at 3.

4.2.3 Right to liberty and security of person

Violations of the right to liberty and security of person is committed by both Boko Haram and Nigerian security forces. In particular, it is on the side of the state security forces that we can document violations of arbitrary arrests and detention. However, the right to personal liberty and arbitrary arrest also includes the deprivation of freedom for other reasons and conditions laid down by law,³¹⁵ which would apply to Boko Haram's abductions.

It is well-documented that Nigerian security forces have carried out arbitrary arrests and detention of suspects.³¹⁶ In 2016, 9 out of 26 sites for IDPs surveyed in Borno reported arbitrary arrests or detention by Nigerian security forces.³¹⁷ Many camps see a particular absence of men of 'fighting age'.³¹⁸ It is reported that many men and boys have disappeared with their whereabouts unknown; some are held in detention and others have been recruited to Boko Haram.³¹⁹ Regardless of reason, it is evident that both Boko Haram and security forces pose a real threat to the civilian male population.³²⁰ The perception that IDPs poses a threat to security results in limitations to their freedom of movement.³²¹ This includes 'screenings' and long periods of detention of IDPs, as well as restriction of movement in and out of camps, which severely affects IDPs' ability to seek livelihood and income opportunities.³²² This naturally further implicates the dire situation of deprivation and general living conditions of IDPs in camps. Arbitrary arrests and detention and restriction on the freedom of movement are obvious threats and violations of their right to physical security and are contrary to principle 14(2) of the Guiding Principles and the Kampala Convention, as well as the right to liberty and security of person.³²³

³¹⁵ ACHPR supra note 129 art. 6.

³¹⁶ Williams & Guttschuss op cit note 285 at 58; Amnesty International op cit note 271 at 75-86.

³¹⁷ PSWGN & UNHCR op cit note 284 at 8.

³¹⁸ Human Rights Council op cit note 232 at 15 para 58.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Ibid at 15 para 59.

³²² Ibid at 16 para 62.

³²³ The Constitution supra note 132 art 41; UDHR supra note 120 arts. 3 and 4; ICCPR supra note 125 art. 9; ACHPR supra note 129 art. 6; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3 and 37; Additional Protocol II supra note 160 art. 4; UN Guiding Principles op cit note 35 principles 10, 12 and 14.

Boko Haram has violated IDPs' right to liberty and physical security through systematic abductions. In particular, women and children have been targets for abduction. Abductions of women and girls occurred in various situations, including 'from their homes and villages while working on the farms, fetching water, or attending school'.³²⁴ In 2016, the majority of settlement sites for IDPs surveyed in Borno reported that they had civilians present who had been released from Boko Haram abduction.³²⁵ Boko Haram have systematically abducted children from towns and villages, and those who have been freed or managed to escape reports of being forced to fight, sexual violence, and exploitation.³²⁶ Both women and children that escape abduction are often displaced and unable to return to their homes, as they face stigmatisation and discrimination by their families and community.³²⁷ By abducting civilians, Boko Haram is in violation of IHL and IHRL.³²⁸

Residents from towns and villages reported that the government was unsuccessful in thwarting attacks and abductions of women and girls.³²⁹ Moreover, security forces were ineffective in providing protection for victims under immediate threat during confrontations.³³⁰ This shows that the Nigerian government may be held responsible for their inability to prevent and protect civilians from human rights violations, which violates their obligation not only in terms of international human rights treaties and IHL, but also the Kampala Convention through failing to provide sufficient protection.³³¹

Importantly, all the different violations of IDPs' right to physical security emanating from the state authorities or Boko Haram contribute to the severe humanitarian crisis IDPs and the population of the north-east of Nigeria is facing today. The inability of the Nigerian state to provide adequate protection and assistance to IDPs induce

³²⁴ Segun & Muscati op cit note 306 at 1.

³²⁵ PSWGN & UNHCR op cit note 284 at 5.

³²⁶ Human Rights Council op cit note 232 at 14 para 55.

³²⁷ Ibid at 15 para 56.

³²⁸ UDHR supra note 120 arts. 3 and 4; ICCPR supra note 125 art. 9; ACHPR supra note 129 art. 6; Kampala Convention supra note 88 art. 9; Geneva Convention (IV) supra note 61 arts. 3 and 37; Additional Protocol II supra note 160 art. 4.

³²⁹ Segun & Muscati op cit note 306 at 38.

³³⁰ Ibid.

³³¹ Kampala Convention supra note 88 arts. 5 and 7.

violations of IDPs right to physical security by other actors as these conditions amplify situations in which violations of IHL and IHRL can occur.

5. Measures taken

This chapter identifies certain measures taken by the Nigerian state and relevant international institutions to protect IDPs' right to physical security and comply with international human rights standards. These measures have been divided into three main categories; assistance, policy, and accountability. It reviews efforts from the Nigerian government and selected large international non-governmental organisations, as well as regional efforts.

5.1 Humanitarian assistance

As established in previous chapters of this thesis, the state bears the primary responsibility to protect and assist IDPs within their territory. Nigeria have attempted to tackle the immense humanitarian crisis in the north-east on state and federal levels, however, their response is reportedly limited by scarce resources and capacity.³³² The forefront of the national response has been NEMA and its state counterparts, State Emergency Management Agencies who has been responsible for the humanitarian crisis response, including provision and delivery of food and other basic essentials.³³³ Furthermore, the National Commission for Refugees, Migrants and Internally Displaced People, and the National Human Rights Commission have contributed to the government response to provide humanitarian assistance.³³⁴ In Borno, the Borno State Emergency Management Agency bears the main responsibility to distribute aid, including food, medicine, clothing and bedding, as well as managing the official IDP camps.³³⁵

As of November 2016, 149 formal and informal camps were recorded in Borno, Adamawa, and Yobe. In 116 of the sites IDPs practiced open defecation, 86 had no malnutrition screening, 42 sites had no access to health facilities, 16 lacked access to portable water, 59 offered no access to education for children, and 20 sites had no access to food.³³⁶ Furthermore, in 11 out of 26 sites for IDPs surveyed in Borno in 2016 there was reported discrimination in access to assistance, where the majority

³³² Human Rights Council op cit note 232 at 6 para 15.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ HRW op cit note 292.

³³⁶ OCHA op cit note 240.

populations reportedly favouring their own tribal group, disabled people have limited access in assistance, and in one camp accusations of the IDP leader diverted food assistance.³³⁷ Discrimination in assistance to IDPs is a direct violation of the Kampala Convention.³³⁸ These statistics indicates an incredible deficiency in the national humanitarian response to IDPs, which can naturally be linked to la lack of funding, monitoring of and resources available to the institutions responsible, as well as the unstable security situation in the area.

Consequently, in order to save lives and provide long-term solutions to the massive humanitarian crisis and the internal displacement IDPs in Nigeria are facing, the Nigerian government and its partners need to scale up their response.³³⁹ In 2016, the humanitarian response was only funded 38 per cent of the estimated need.³⁴⁰ As of a crisis update on the Lake Chad Basin in August 2017, only 39.6 per cent of the funding requirement for the crisis as a whole had been met.³⁴¹ Nigeria, the country responsible for the majority of the total need for funding, had covered 45.2 per cent of the funding requirement.³⁴² As such, there is still an urgent need for further funding to be able to provide adequate assistance and protection to civilians in north-eastern Nigeria.

A natural result of the wide array of violations of IHRL and IHL, in conjunction to the inadequate humanitarian assistance reported in several IDP camps, the government-led responses have been widely critiqued. Government officials have stated that Nigeria lacked experience of a humanitarian and displacement crisis of the current scale, other humanitarian partners labelled the government-led responses as too little too late, and stated that the institutional bodies operated as ad hoc, fragmented, lacking coordination and demonstrated institutional rivalry.³⁴³ Subsequently, international assistance is important and necessary to provide more adequate assistance and protection to IDPs.

³³⁷ PSWGN & UNHCR op cit note 284 at 7.

³³⁸ ACHPR supra note 129 art. 5(1).

³³⁹ Human Rights Council op cit note 232 at 17 para 69.

³⁴⁰ Ibid.

³⁴¹ United Nations Office for the Coordination of Humanitarian Affairs (OCHA) 'Lake Chad Basin: Crisis Update No. 18' 11 August 2017 OCHA Crisis Update No. 18 at 7, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/Lake%20Chad%20Basin%20Crisis%20Update%20No.%2018.pdf>, accessed on 24 August 2017.

³⁴² Ibid.

³⁴³ Human Rights Council op cit note 232 at 8 para 23.

Several international organisations are present in north-eastern Nigeria, and constantly provide humanitarian assistance to the civilian population, including IDPs. The international community has a vital role to play in addressing and resolving the humanitarian crisis, and Nigeria is absolutely dependent on this support to fund the humanitarian response and protect and assist IDPs.³⁴⁴ ECOWAS has established several humanitarian instruments to assist its member states, including the ECOWAS Humanitarian Policy and the Humanitarian Response Mechanism.³⁴⁵ Furthermore, ECOWAS has donated food to some of the north-eastern states in Nigeria to assist NEMA in their work in the region.³⁴⁶

The UNHCR has assisted and contributed to the humanitarian assistance in Nigeria, and neighbouring countries, tending to the needs of refugees and IDPs. The UNHCR and its UN partners are working with national authorities to assist IDPs through promoting and protecting their human rights, as well as providing shelter, daily essentials and ‘access to legal and psycho-social support to victims of sexual abuse and gender based violence’.³⁴⁷

The International Committee for the Red Cross (ICRC) works in cooperation with the Nigerian Red Cross Society with humanitarian assistance to the civilian population in north-eastern Nigeria.³⁴⁸ The ICRC provides food, healthcare, clean water, and emergency shelter to thousands of civilians affected by the conflict.³⁴⁹ Importantly, they also visit detainees and ensure that the treatment and living conditions meet international standards, as well as disseminating information on IHL and IHRL to

³⁴⁴ Human Rights Council op cit note 232 at 17 para 68.

³⁴⁵ Economic Community Of West African States ‘ECOWAS humanitarian efforts directly impact security in the region’ (2017) available at <http://www.ecowas.int/ecowas-humanitarian-efforts-directly-impact-security-in-the-region/>, accessed on 3 September 2017.

³⁴⁶ Economic Community Of West African States ‘The ECOWAS Commission comes to the Aid of People suffering from food crisis in the North East of Nigeria’ (2017) available at <http://www.ecowas.int/24060/>, accessed on 3 September 2017.

³⁴⁷ United Nations High Commissioner for Refugees ‘Nigeria emergency’ available at <http://www.unhcr.org/afr/nigeria-emergency.html>, accessed on 22 August 2017.

³⁴⁸ International Committee of the Red Cross ‘Nigeria: Responding to the needs of people affected by armed conflict in 2017’ 05 May 2017, available at <https://www.icrc.org/en/document/nigeria-responding-needs-people-affected-armed-conflict-2017>, accessed on 22 August 2017 (hereafter ICRC).

³⁴⁹ Ibid.

security forces, government authorities, community groups, and religious leaders.³⁵⁰ By doing so, the ICRC are taking essential measures to introduce, monitor, and implement international human rights standards in the national treatment of IDPs.

The Norwegian Refugee Council have also contributed immensely to the humanitarian response to the current crisis. They have since 2015 provided lifesaving assistance to thousands of civilians through their food programme, providing shelter, clean water, sanitation and hygiene, as well as information, counselling and legal assistance.³⁵¹ It is important to remember that although international organisations can play an important role in assisting and protecting IDPs, they cannot replace the government or the government's responsibility to protect their citizens.³⁵²

5.2 National policy and legislation

Already in 2012 several challenges were reported relating to the prevention of displacement, assistance, return, and relocation of IDPs.³⁵³ In July 2012, the Nigerian government introduced its National Policy on Internally Displaced Persons in Nigeria (the Policy).³⁵⁴ The Policy was a result of a committee set up in 2003 to draft a national policy on IDPs, and is based on the Guiding Principles and the Kampala Convention.³⁵⁵ The Policy includes a policy framework and scope, and sets out the rights and obligations of IDPs and responsibilities of government, humanitarian agencies, host communities, and armed groups to IDPs.³⁵⁶ Lastly, the Policy contains a policy implementation framework and strategies.³⁵⁷

Critiques of the Policy at the time highlighted that it has no legal status and is therefore incapable of enforcement by government or delegated actors.³⁵⁸ Furthermore, the issue of lacking funding was raised, and a lack of accountability by those entrusted with

³⁵⁰ ICRC op cit note 348.

³⁵¹ Norwegian Refugee Council 'NRC in Nigeria' available at <https://www.nrc.no/countries/africa/nigeria/>, accessed on 22 August 2017.

³⁵² Christiano d'Orsi 'Strengths and weaknesses in the protection of the Internally Displaced Persons in Sub-Saharan Africa' (2011) *Connecticut Journal of International Law* 28(1) at 114.

³⁵³ Bagoni Alhaji Bukar 'Nigeria needs to take responsibility for its IDPs' (2012) *Forced Migration Review* 40 at 44.

³⁵⁴ National Policy on Internally Displaced Persons in Nigeria of 2012, available at <http://infopointmigration.org.ng/wp-content/uploads/NATIONAL-IDP-POLICY.pdf>, accessed on 24 August 2017 (hereafter National Policy on IDPs).

³⁵⁵ Bukar op cit note 353 at 44.

³⁵⁶ National Policy on IDPs op cit note 354.

³⁵⁷ Ibid.

³⁵⁸ Bukar op cit note 353 at 45.

public office and funds.³⁵⁹ It was stated that the Policy came at a time when the country needed a strong legal and institutional framework, and effective implementing institutions of such, rather than a policy.³⁶⁰ The Policy is still to be adopted by the federal government, however, the National Commission on Refugees, Migrants and Internally Displaced Persons have reactivated the process of reviewing the draft policy.³⁶¹ Consequently, the critique posed in 2012 remains valid, as 14 years after a committee was set up to develop the Policy, it has not been adopted and national legislative and policy frameworks are still lacking.

5.3 Regional policy and legislation

Although Nigeria has ratified the Kampala Convention,³⁶² they are still to domesticate its provisions. In April 2016 a Draft Bill to implement the Kampala Convention was introduced before the National Assembly, and in July 2016 the Bill passed the second reading in the House of Representatives.³⁶³ However, it is yet to be passed into law.³⁶⁴ In March 2017, the Speaker of the House of Representatives assured that the National Assembly will domesticate the Kampala Convention, claiming that the delay in the domestication is that the executive is still to forward it to the National Assembly.³⁶⁵ The implementation and domestication of the provisions of the Kampala Convention would contribute significantly to establish guidelines on interventions for protection and assistance to IDPs, as well as recovery and durable solutions to create clarity and ensure coordination of the roles and responsibilities of different institutions and agencies.³⁶⁶ Therefore, the work that is being done on creating national policies and implementation of international standards is crucial for further success and protection. Additionally, Nigeria is also cooperating on a regional level with neighbouring countries to create frameworks to assist and protect the civilians affected by the

³⁵⁹ Bukar op cit note 353 at 45.

³⁶⁰ Ibid.

³⁶¹ Human Rights Council op cit note 232 at 7 para 18.

³⁶² African Union op cit note 178.

³⁶³ Economic Community Of West African States (ECOWAS) Commission & International Committee of the Red Cross '2016 Report: Implementing IHL in West Africa' Report (2016) at 28, available at https://www.humanitarianresponse.info/system/files/documents/files/ecowas_cicr-ihl_report2016-a4-highres_eng.pdf, accessed on 22 August 2017.

³⁶⁴ Human Rights Council op cit note 232 at 7 para 18.

³⁶⁵ Admin at Rt. Hon. Yakubu Dogara 'N/Assembly ready to domesticate Kampala Convention on IDPs, Dogara assures' 21 March 2017, available at <http://yakubudogara.com.ng/nassembly-ready-to-domesticate-kampala-convention-on-idps-dogara-assures/>, accessed on 24 August 2017.

³⁶⁶ Human Rights Council op cit note 232 at 7 para 17.

situation in the Lake Chad Basin.

In June 2016, the affected governments (Nigeria, Cameroon, Chad and Niger) came together to ‘discuss the most urgent protection risks in the Lake Chad Basin’.³⁶⁷ The result was the establishment of the Abuja Action Statement (AAS), where the countries committed to a variety of actions to ensure the protection of and assistance to IDPs, refugees and other civilians.³⁶⁸ Importantly, the states recognised the legitimacy of national security concerns, although it was highlighted that there needs to be an appropriate balance between security and human rights.³⁶⁹ The governments committed to various actions and measures including, but not limited to, commitments within the areas of involuntary displacement in order to facilitate free movement of persons, as well as facilitating compliance between the military and civilians and maintaining a civilian character of IDP and refugee areas.³⁷⁰ Some of the measures agreed upon were to ensure that security forces comply with international standards, promote knowledge and training on IHL and IHRL, and guarantee national compliance with standards set regionally and internationally.³⁷¹ Notably, the state parties also agreed on establishing follow-up mechanisms through developing a plan of action at a national level and continuously monitoring the implementation and progress both nationally and regionally.³⁷² However, as previously mentioned African states are often seen as eager to establish normative standards, yet fails to implement and enforce these.³⁷³ As such, it is commendable that the AAS commits the state parties to cooperate and develop a plan of action to handle the current humanitarian crisis that affects all four countries, although the implementation and enforcement of international and regional normative standards into the domestic system is key to achieve success and reach the goals set out.³⁷⁴

³⁶⁷ Regional Protection Dialogue on the Lake Chad Basin: Abuja Action Statement, adopted on 8 June 2016 by the Governments of Nigeria, Cameroon, Chad, and Niger at the Regional Protection Dialogue on the crisis in the Lake Chad Basin at 1, available at <https://data2.unhcr.org/en/documents/download/49363>, accessed on 24 August 2017.

³⁶⁸ Ibid.

³⁶⁹ Ibid at 1-2.

³⁷⁰ Ibid at 1-4.

³⁷¹ Ibid at 2-4.

³⁷² Ibid at 4.

³⁷³ Juma op cit note 188 at 238.

³⁷⁴ Ibid at 239.

As a response to the AAS, a Regional Protection Strategic Framework (RPSF) responding to the crisis in the Lake Chad Basin for 2017-2018 was presented.³⁷⁵ The RPSF aims to support the governments in achieving and implementing the actions identified in the AAS, as well as creating a strategic framework to guide the humanitarian response in the area.³⁷⁶ The RPSF sets out overarching strategic objectives, and identifies detailed areas of specific concern within different protection categories. Importantly, domestication and implementation of the Kampala Convention, as well as strengthening of national legal and policy frameworks relating to displaced people – and bringing them in line with relevant international and regional conventions – is identified as two out of four protection priorities.³⁷⁷ The strategies involves state actors as well as non-state and international actors, especially on how humanitarian agencies can assist the relevant states in achieving and implementing the actions and measures identified. This strategic framework is important, as it actualises and puts the current legal framework and international agreements into practice. Consequentially, this takes the AAS one step further and creates a plan on how to realise the objectives on how to better protect and assist IDPs and civilians affected.

5.4 Accountability

In exploring violations of human rights, and crime in general, it is natural to address the issue of accountability. When perpetrators are identified, and more crucially, when the state itself is identified as a perpetrator, can individuals expect accountability for the violations committed? To explore the accountability of perpetrators of violations of the right to physical security for IDPs in Nigeria comprehensively is beyond the limits of this dissertation, however, this section identifies some measures taken in attempt to create accountability for violations committed.

As found previously in Chapter 4, there are various claims of human rights violations, and violations of the right to physical security for IDPs in Nigeria. In the context of violations committed by the Nigerian military and other security forces, Amnesty

³⁷⁵ Regional Protection Working Group 'Regional Protection Strategic Framework: Responding to the protection crisis in the Lake Chad Basin' (2017) available at https://www.humanitarianresponse.info/system/files/documents/files/lcb_protection_strategy.pdf, accessed on 24 August 2017.

³⁷⁶ Ibid at 4.

³⁷⁷ Ibid at 10.

International reported in 2015 that there is little doubt that the military command at all levels were regularly informed of the operations conducted in north-east Nigeria.³⁷⁸ Thus, although military commanders or other high level leaders did not commit violations themselves, they have a responsibility to investigate and prosecute perpetrators. As previously argued, the principle of due diligence also places a responsibility on the Nigerian state.

In *Velasquez Rodriguez v. Honduras*³⁷⁹ the Inter-American Court of Human Rights dealt with the issue of enforced disappearance and due diligence in relation to ‘state responsibility for non-state acts’.³⁸⁰ It was argued by the court that the government may be held responsible for violations of human rights, although not committed directly by the government, due to the ‘lack of due diligence to prevent the violation or to respond to it as required’.³⁸¹ The Court found that the government did not ‘take effective action to ensure respect for human rights within the jurisdiction of that State’³⁸² and thus they failed to uphold the obligations placed on it by the American Convention on Human Rights.³⁸³ Consequently, it was found that states may be held liable for acts of human rights violations as a result of their obligation to exercise due diligence, and they have a duty to ‘prevent, investigate and punish’ violations of human rights.³⁸⁴

Regardless of an abundance of information and exhaustive reports on violations committed by security forces, authorities have ‘consistently failed to take meaningful action to stop them and bring perpetrators to justice’.³⁸⁵ The Kampala Convention requires state parties to ensure individual responsibility for acts of arbitrary displacement, and ensure the accountability for acts of arbitrary displacement,³⁸⁶ as well as several of these acts (e.g. sexual assault, sexual violence, arbitrary arrest and

³⁷⁸ Amnesty International op cit note 267 at 94.

³⁷⁹ 1988 Inter-American Court of Human Rights (ser. C) No. 4 (July 29, 1988).

³⁸⁰ Ibid; Lee Hasselbacher ‘State Obligations regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection’ (2009) *Northwestern University Journal of International Human Rights* 8(2) at 193 para 12.

³⁸¹ *Velasquez Rodriguez* supra note 379 para 172.

³⁸² Ibid para 180.

³⁸³ Ibid para 194(2)-(4).

³⁸⁴ Ibid para 166; Hasselbacher op cit note 380 at 194 para 13.

³⁸⁵ Amnesty International op cit note 271 at 101.

³⁸⁶ Kampala Convention supra note 88 art. 3(g)-(i).

detention, extrajudicial killings) are clear violations under IHL and IHRL. Although Nigerian authorities have an obligation under international law to investigate and prosecute those responsible for human right abuses, research show that only very few cases are alleged perpetrators been prosecuted.³⁸⁷ Furthermore, it is reported that there have been limited efforts to investigate and persecute Boko Haram members implicated in serious violations of IHL and IHRL.³⁸⁸ The documented extrajudicial killings of Boko Hara suspects is in itself an example of a failure to investigate and prosecute suspects, as well as being a violation of IHRL. Moreover, the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani, found during his visit to Nigeria in August 2016 that the that civil authorities and the military downplayed the issue of sexual abuse and the involvement of security and camp officials.³⁸⁹

However, there have been positive steps taken in attempt to hold perpetrators accountable. In October/November 2016, following Human Rights Watch's reports of Nigerian authorities raped and sexually exploited several internally displaced women and girls, President Muhammadu Buhari expressed that he had ordered immediate investigations of these findings.³⁹⁰ Shortly thereafter it was said by the Nigerian Inspector General of Police, Abraham Idris, that ten men had been arrested for these crimes, including policemen, military personnel and other security forces, as well as a ministry official.³⁹¹ Although the Nigerian government now has shown some initiative to hold perpetrators accountable for violations of women and girls rights, it has been emphasised that the national laws in place to protect IDPs and the existing complaint mechanisms are inadequate to protect internally displaced women and girls from violence or to achieve legal redress in the context of the crisis.³⁹²

However, should the Nigerian state fail to hold perpetrators of the most serious crimes of international concern, which the violations of physical security in this chapter

³⁸⁷ Williams & Guttschuss op cit note 285 at 78; Geneva Convention (IV) supra note 61 arts. 146 and 148.

³⁸⁸ Segun & Muscati op cit note 306 at 47.

³⁸⁹ Human Rights Council op cit note 232 at 13 para 50.

³⁹⁰ Amy Breunschweiger 'Positive steps taken in defence of Boko Haram Victims' *Human Rights Watch* November 2017, available at <https://www.hrw.org/news/2016/11/01/positive-steps-taken-defense-boko-haram-victims>, accessed on 23 August 2017.

³⁹¹ Ibid.

³⁹² Human Rights Council op cit note 232 at 13 para 50.

arguably could be identified as,³⁹³ the International Criminal Court (ICC or the Court) could prosecute perpetrators. Nigeria has been a member of the ICC since ratifying the Rome Statute in 2003,³⁹⁴ and thus the Court has jurisdiction over crimes of genocide, crimes against humanity, war crimes and the crime of aggression.³⁹⁵ Currently, there are ongoing preliminary examinations of alleged crimes against humanity and war crimes committed in the context of the armed conflict between Boko Haram and state security forces.³⁹⁶ The investigations are initiated by the Prosecutor as granted by the Rome Statute³⁹⁷ and the Office of the Prosecutor of the Court is analysing the allegations of crimes committed in Nigeria to assess the admissibility of the potential cases in order to reach a decision on whether to open an investigation.³⁹⁸ As many as eight potential cases of war crimes and crimes against humanity by both Boko Haram and Nigerian security forces have been identified by the Office of the Prosecutor.³⁹⁹ However, the key factor for the admissibility of these cases is determined based on the Office of the Prosecutor finding the national authorities unable or unwilling to conduct proceedings against all sides of the conflict.⁴⁰⁰ Therefore, although international scrutiny and the commitment to prosecute perpetrators is imperative to create international standards for IHL and IHRL, and hold individuals accountable when states fail, it is not the ideal source of justice and accountability. National implementation, domestication, and legislation of international human rights conventions and standards, and the state's willingness to enforce such, is key to provide both adequate assistance and protection of IDPs.

As a result, because IDPs are still inside the territories of its state of origin, they are within the jurisdiction of the state and the state bear the primary responsibility of their protection. Arguably, the idea of state sovereignty is essential to the way the

³⁹³ Rome Statute of the International Criminal Court, 2187 UNTS 90, adopted on 17 July 1998 and entered into force July 2002 art. 7(1) (hereafter Rome Statute).

³⁹⁴ International Criminal Court 'Nigeria' available at https://asp.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/nigeria.aspx, accessed on 23 August 2017.

³⁹⁵ Rome Statute *supra* note 393 art. 5(1).

³⁹⁶ International Criminal Court 'Preliminary Examination – Nigeria' available at <https://www.icc-cpi.int/nigeria>, accessed on 23 August 2017.

³⁹⁷ Rome Statute *supra* note 393 art. 15.

³⁹⁸ International Criminal Court 'Report on Preliminary Examination activities (2015)' (2015) International Criminal Court Report para 221, available at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>, accessed on 23 August 2017.

³⁹⁹ *Ibid* para 195.

⁴⁰⁰ *Ibid* para 222.

international community of states regulate their interaction today. Several international treaties, particularly the Charter of the United Nations ascertains that a state has sovereign power over its territories and it prohibits the use of force, or threat of thereof ‘against the territorial integrity or political independence of any state’.⁴⁰¹ However, limits to this is established in cases where the Security Council of the United Nations can decide on using armed force to maintain and restore international peace and security, and states can use armed force in cases of self-defence.⁴⁰² Yet, the threshold for such action is high and its track record of previous humanitarian interventions, or lack of thereof, is highly controversial.⁴⁰³ Subsequently, the measures taken in order to protect and assist IDPs today weighs heavily on the sovereign state and there are severe limits to the legality of outside interference without state consent. Therefore, the international protection of IDPs’ right to physical security is ultimately enforced by the state. Regardless of the rights being established and granted on an international level it is the national government that bears the responsibility to fulfil these rights and ensure the protection of such.

This chapter explored the measures taken, primarily by the Nigerian state, to ensure that the assistance and protection of IDPs complies with international human rights standards. The next chapter will investigate, based on these findings, whether the current protection of IDPs’ right to physical security is Nigeria does *de facto* comply with international human rights standards.

⁴⁰¹ Charter of the United Nations *supra* note 142 arts. 2(1) and 2(4).

⁴⁰² *Ibid* arts. 42 and 51.

⁴⁰³ International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty* (2001) at 1.

6. National implementation and compliance

Based on the legal framework, human rights violations, and measures taken to protect IDPs as described in previous chapters, this chapter examines the national implementation and domestication of the Kampala Convention in particular as it is the only legally binding international framework that specifically considers IDPs. Additionally, as the Kampala Convention regularly refers to compliance with IHRL and IHL, the implementation and enforcement of the Kampala Convention automatically relates to the implementation and enforcement of other human rights mechanisms and IHL. Furthermore, it will discuss the benefits and challenges of the Kampala Convention. This chapter also deals with whether there is a gap in international law relating to the protection of IDPs, and whether *de facto* situation for IDPs in Nigeria today is consistent with international human right standards.

6.1 Implementation and implication of Kampala Convention

The impact of signing and ratifying international human rights instruments and international treaties is often rather limited if the national implementation and domestication of such measures is lacking. As previously established under Section 4.3.2 of this dissertation, Nigeria has ratified the Kampala Convention, although the government is still to domesticate its provisions. This means that although the ratification of the Kampala Convention makes it legally binding on the state, its provisions, rights, and obligations do not hold the same influence as legislation implemented in national laws. Additionally, although Nigeria has a Draft National Policy on Internally Displaced Persons, it has not yet been adopted and as it carries no legal obligation Nigeria is still lacking national legislative and policy frameworks on how to protect and assist IDPs.

The Kampala Convention established that states are expected to incorporate their obligations under the convention into domestic law and adopt strategies and policies on local and national levels.⁴⁰⁴ Thus, by delaying the adoption of the Draft National Policy on IDPs Nigeria is failing to uphold their obligation to the Convention. However, although the government has no domestic legislation on IDPs, they have shown efforts in developing policies and action plans through their cooperation with

⁴⁰⁴ Kampala Convention supra note 88 arts. 3(2)(a) and 3(2)(c).

neighbouring states and the signing of the AAS and the development of the RPSF. These action plans and strategic frameworks serve as measures to implement and enforce the Kampala Convention on a regional level. Nevertheless, if these measures are not enforced nationally their impact is limited. Consequently, although the ratification of the Kampala Convention has been an important development in the assistance and protection of IDPs, it has both benefits and challenges.

6.2 Benefits

As the first regional convention considering the protection and assistance of IDPs, the Kampala Convention in itself is revolutionary. It is a comprehensive convention, that covers issues arising prior to, during, and after displacement.⁴⁰⁵ In contrast to the Guiding Principles organised around the needs and vulnerabilities of IDPs, the Kampala Convention takes the obligations of states as a fundamental starting point.⁴⁰⁶ This is beneficial, as IDPs are still within the jurisdiction of their state of origin, and by focusing on their obligations, and in particular obligations that are already ratified or part of domestic law, the Convention seems more appealing and easier to implement and enforce.

Internationally, in particular in reference to human rights, the concept of sovereignty and non-intervention have been used to shield states relationship with their citizens from the scope of public international law.⁴⁰⁷ Thus, it is interesting that this very concept is now used by the Kampala Convention to place responsibility and obligations on the sovereign state towards its nationals. African states and the AU have been deeply influenced by doctrines and rhetoric of state sovereignty and non-interference, and as such, it is ironic that the forefront of legal of legal developments is now based on the same concepts that have internationally been constrained by similar considerations.⁴⁰⁸ Importantly, for states that value the importance of non-intervention and state sovereignty this development is creative and essential as it combines these values with the international focus on human rights, protection and humanitarian assistance which in the end benefits IDPs.

⁴⁰⁵ Allehone M. Abebe *The Emerging Law of Forced Displacement in Africa: Development and implementation of the Kampala Convention on Internal Displacement* (2017) at 188.

⁴⁰⁶ Ibid at 151.

⁴⁰⁷ Ibid at 6.

⁴⁰⁸ Ibid at 94.

In addition to focusing on state responsibility through sovereignty, the Kampala Convention also recognises the importance of host communities and the burden internal displacement places on them.⁴⁰⁹ Through its provisions, the Convention calls for assistance and evaluations of the requirement of host communities affected by internal displacement.⁴¹⁰ This is important as it contributes to strengthen the ability of governments and aid organisations to adopt decisions that benefits local, social services and infrastructures in order to equally meet the needs of IDPs and host communities.⁴¹¹ Despite these provisions, statistics show that this has not been successfully implemented in Nigeria, with the majority of IDPs registered are living in host communities with a majority in communities with no coordinated or coherent out-of-camp humanitarian strategy in place.⁴¹²

Although the Kampala Convention uses state obligations and responsibility as a fundamental starting point, it has also successfully placed responsibility and obligations on international organisations and given the AU an essential role in protecting and assisting IDPs. It is argued that the AU was able to develop a legal framework to deal with internal displacement emphasises the increasing role of regional organisations.⁴¹³ Furthermore, it is remarkable that African states were ready to grant the AU authority to start the process of developing a legal framework.⁴¹⁴

In Article 8 of the Convention, the AU is given obligations relating to the protection and assistance of IDPs.⁴¹⁵ By referring to the Constitutive Act of the AU relating to the right to intervene in situations of grave circumstances, Article 8(1) of the Convention allows the AU to intervene in situations of internal displacement beyond the control by any state party.⁴¹⁶ Furthermore, the Convention also obliges the AU to support the efforts of states to protect and assist IDPs.⁴¹⁷ Furthermore, the Convention also establishes obligations relating to international organisations and humanitarian

⁴⁰⁹ d'Orsi op cit note 352 at 113.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² Human Rights Council op cit note 232 at 7 para 21 and 6 para 12.

⁴¹³ Abebe op cit note 405 at 6.

⁴¹⁴ Ibid at 97.

⁴¹⁵ Kampala Convention supra note 88 art. 8.

⁴¹⁶ d'Orsi op cit note 352 at 100.

⁴¹⁷ Kampala Convention supra note 88 art. 8(3).

agencies.⁴¹⁸ This reinforces the role of international organisations in protecting and assisting IDPs,⁴¹⁹ and although the Convention is based on the notion of state responsibility, it acknowledges the role and importance organisations and humanitarian agencies have.

The Kampala Convention reference to IHRL and IHL in its provisions. The Guiding Principles, IHL and IHRL, as well as African regional human rights instruments all contributed to its development.⁴²⁰ As such, the Convention serves as an important mechanism to promote and protect IHRL and IHL. Although the protection of and respect for IHRL and IHL is mentioned in several articles, Article 20 specifically establishes that rights provided to IDPs by other international and regional instruments shall not be affected or limited by the Convention.⁴²¹

Subsequently, the extent of the human rights protection provided for IDPs by IHRL depends largely on the individual ratification by the different states. However, the ACHPR is mentioned specifically as a point of reference of rights that shall be respected.⁴²² In relation to IHRL, the review mechanisms connected to these can play an important role in monitoring the implementation of the Kampala Convention.⁴²³ Moreover, the monitoring mechanism of the ACHPR is mentioned specifically in the Convention as a tool where states shall ‘indicate the legislative and other measures that have been taken to give effect to’ the Convention.⁴²⁴ Because Nigeria has ratified the ICCPR, ACHPR and CAT, the review and monitoring mechanisms connected to these also carry a significant responsibility to uphold the rights and monitor violations of such towards IDPs as its protections extends to them.

Furthermore, the Convention goes to great lengths to prohibit arbitrary displacement, and the Convention prohibits a wide array of acts that constitute arbitrary displacement.⁴²⁵ Importantly, displacement caused by generalised violence or

⁴¹⁸ Kampala Convention supra note 88 art. 6.

⁴¹⁹ Abebe op cit note 405 at 269.

⁴²⁰ Ibid at 145-148.

⁴²¹ d’Orsi op cit note 352 at 103.

⁴²² Kampala Convention supra note 88 art. 20.

⁴²³ Abebe op cit note 405 at 269-270.

⁴²⁴ Kampala Convention supra note 88 art.14(4).

⁴²⁵ Ibid art.4(4).

violations of human rights, as well as displacement as a result of harmful practices is prohibited, and is clearly influenced by IHRL.⁴²⁶ The prohibition of arbitrary displacement is not new to international law, but the details and extent of acts outlined in the Kampala Convention is progressive and thus fill a potential gap in international law.⁴²⁷ In contrast to crimes against humanity, an act of arbitrary displacement under the Kampala Convention does not need to be ‘widespread’ or happening during armed conflict, and thus the provisions represent a broad approach to the prevention of forced migration.⁴²⁸ As a result, the Kampala Convention attempts to address the causes of displacement and prevent displacement from happening in the first place.

In relation to IHL, the addition of Article 7 in the Convention that relates to protection and assistance to IDPs in situations of armed conflict serves as important protection for IDPs in Nigeria. This provision, as well as those dealing with the responsibility and accountability of armed groups contribute to advance the protections of IHL.⁴²⁹ As the ability of IHL to deal with conflict of a non-international character is rather limited, the Kampala Convention is an advantageous contribution to IHL.

As much as the Kampala Convention can be seen as a milestone in the protection of IDPs, as well as for the regionalist approach on a host of IHL and human rights,⁴³⁰ it does not come without challenges. The Convention particularly strengthens the convergence between human rights and IDPs,⁴³¹ yet there are still issues states are facing with implementation and enforcement.

6.3 Challenges

The Kampala Convention provides for great measures benefitting IDPs, but better protection and assistance for IDPs do not automatically come about by signing and ratifying an international convention. The actual impact of the transformation of a regional human rights system which had in the past considered the protection of IDPs

⁴²⁶ Mike Asplet & Megan Bradley ‘Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force’ *American Society of International Law: Insights* 16(36), available at <https://www.asil.org/insights/volume/16/issue/36/strengthened-protection-internally-displaced-persons-africa-kampala>, accessed on 31 August 2017.

⁴²⁷ Ibid.

⁴²⁸ Ibid.

⁴²⁹ Abebe op cit note 405 at 269.

⁴³⁰ Ibid at 94.

⁴³¹ Ibid.

more of a humanitarian issue than an agenda for human rights shall not be overrated.⁴³² The Convention is a significant development in the field of internal displacement, however it is not without flaw.⁴³³

It has been established that the Convention is based on the notion of state responsibility through state sovereignty and non-interference. However, this focus and emphasis on state responsibility becomes an issue in cases where the state itself is causing displacement, and is either unable or unwilling to provide protection and relief.⁴³⁴ As a result, the Convention provides limited tools to third states and the international community to respond to internal displacement.⁴³⁵ Although one could argue that the inclusion of the opportunity for the AU to intervene in Article 8 of the Convention, humanitarian interventions and the concept of an international responsibility to protect is highly controversial and debated. Furthermore, by focusing on state responsibility, it becomes challenging to place responsibility for human rights breaches on non-state actors.⁴³⁶ Although the Convention places obligations on non-state actors and armed forces, it is the state that is responsible for accountability in cases of violations.⁴³⁷ As such, one must rely on the justice system of the relevant state to be able to prosecute and hold the perpetrators accountable. In the case of Nigeria, Chapter 5 of this dissertation shows that there have been inadequate efforts to bring perpetrators of human rights violations to justice. Consequently, the effect of these provisions of the Kampala Convention falls on the ability of the ratifying state to uphold them, and as such the Convention provides few other measures for accountability.

When exploring the origins and development of the Kampala Convention, it is clear that it draws from various international sources, including the Guiding Principles, IHRL, and IHL. In contrast to the Guiding Principles, the Kampala Convention was not preceded by any preliminary study, whether on procedural or substantive issues of internal displacement.⁴³⁸ Thus, the grounds on which the Kampala Convention was

⁴³² Abebe op cit note 405 at 95.

⁴³³ Flavia Zorzi Giustiniani 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa.' (2011) *Denver Journal of International Law and Policy* 39(2) at 369.

⁴³⁴ Abebe op cit note 405 at 12.

⁴³⁵ Ibid.

⁴³⁶ Ibid at 11.

⁴³⁷ Kampala Convention supra note 88 arts. 3(1)(h) and 7.

⁴³⁸ Abebe op cit note 405 at 99.

drafted upon were not as refined and established. It is argued that a preliminary study would have allowed for, amongst other things, an assessment of the existing regional jurisprudence on forced displacement, the necessity of a new legal instrument and whether it should have been a separate one, identifying the gaps in the current legal frameworks in which the Convention intended to fill, and lastly providing background on existing national legal frameworks and the member states perception about the initiative to develop a new legal framework.⁴³⁹ Furthermore, there is little information on the systematically arranged official records of negotiations for many of the legal instruments developed in Africa. This is problematic as it presents the absence of what is an important source of information on the history of the development and reasoning for regional treaties.⁴⁴⁰ The AU Commission responsible for drafting and negotiating the development the Kampala Convention prepared reports on the meetings of government officials and legal experts, however these reports were brief and thus there is no access to comprehensive or detailed information of the proceedings and discussions during the development of the convention.⁴⁴¹ Understanding the development process and drafting of the Convention is also important to understand how different governments relate to the Convention, and their concerns regarding implementation.

A reoccurring concern with international conventions is the national implementation and domestication of such provisions. Although national authorities have adopted IDP frameworks, local authorities may not always be able or willing to implement them.⁴⁴² As seen with the Nigerian case, the government has since 2003 been working on a draft policy on IDPs and ratified the Kampala Convention in 2012, yet neither the policy nor the Convention have been domesticated into law at this time of writing. A national implementation mechanism on internal displacement plays an important role in bringing together key actors in assisting and protecting IDPs.⁴⁴³ Failure to do so in many cases lead to inadequate assistance and protection of IDPs. In Nigeria, it is argued that placing the responsibility of coordinating and delivering assistance and protection to IDPs under NEMA without allocating extra resources to respond to the

⁴³⁹ Abebe op cit note 405 at 99.

⁴⁴⁰ Ibid at 98.

⁴⁴¹ Ibid at 100.

⁴⁴² d'Orsi op cit note 352 at 113.

⁴⁴³ Abebe op cit note 405 at 168.

crisis has led to NEMA being described as ‘called upon to do everything but stretched too thin’.⁴⁴⁴ Furthermore, lacking coordination and clarity of the different institutions roles in the humanitarian response has been criticised.⁴⁴⁵ As such, although there are frameworks in place for the protection and assistance of IDPs, the application and implementation of these are challenged by structural problems, lack of resources, political will, or failure to efficiently assess the needs of IDPs.⁴⁴⁶

Funding and investment at national and regional levels are key to ensure the full implementation of the Kampala Convention. Building an effective national response to internal displacement and providing humanitarian relief demands the allocation of sufficient human and material resources.⁴⁴⁷ It is been argued that few countries in Africa have the resources required to fully realise the obligations and commitments of the Convention on their own.⁴⁴⁸ Although Nigeria is one of the largest economies in Sub-Saharan Africa,⁴⁴⁹ the current funding for the humanitarian response in Nigeria is only 45.2 per cent of the funding requirement.⁴⁵⁰ Consequently, the ability to respond efficiently and adequately to the needs of IDPs and comply with international human rights standards in doing so deteriorates.

It is noted that a crucial issue for the Kampala Convention is compliance; the mere adoption, ratification and implementation of international legal obligation will not alleviate human rights violations.⁴⁵¹ As previously mentioned, the focus on state responsibility poses challenges for accountability and enforcement of the Convention. In relation to this, it has been argued that the monitoring mechanisms established by the Convention are weakened due to the few periodic meetings of the Conference of States Parties and state reports to the African Commission on Human and Peoples' Rights.⁴⁵² The submission of reports by States to the ACHPR, and in general state submissions to human rights mechanisms, can be criticised by arguing the fact that

⁴⁴⁴ Human Rights Council op cit note 232 at 8 para 23.

⁴⁴⁵ Ibid.

⁴⁴⁶ d’Orsi op cit note 352 at 113.

⁴⁴⁷ Abebe op cit note 405 at 169.

⁴⁴⁸ Ibid at 270.

⁴⁴⁹ Central Intelligence Agency ‘The World Factbook’ available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>, accessed on 3 September 2017.

⁴⁵⁰ OCHA op cit note 341.

⁴⁵¹ Giustiniani op cit note 433 at 370.

⁴⁵² Ibid.

states themselves are biased to their own actions, and thus state compliance in causing internal displacement or violating the rights of IDPs may not be sufficiently reported. The first meeting of the Conference of State Parties to the Kampala Convention was held in the beginning of April 2017,⁴⁵³ nearly five years after the Convention entered into force. The lack of monitoring of the implementation and compliance of the Convention over time can severely harm the purpose of the provisions, and thus the actual impact on the protection and assistance of IDPs.

6.4 Gaps in international law?

Based on the current international legal framework available for the protection of IDPs' right to physical security in Nigeria, this section explores whether there is a gap in international law relating to the protection of IDPs.

It is a common belief that international law does not provide relevant protection to IDPs.⁴⁵⁴ This can be explained by the lack of legally binding international treaties on the topic of internal displacement, excluding the Kampala Convention. Furthermore, the concept of state sovereignty and non-interference induces the belief that there is little international protection available to IDPs under international law as IDPs have not crossed an international border. Moreover, there is no special status granted to IDPs under international law.⁴⁵⁵ However, as Chapter 3 of this dissertation has showed, both IHRL and IHL are applicable to IDPs. In Nigeria, IDPs' right to physical security are covered extensively through the ICCPR, ACHPR, CAT, Geneva Conventions, and Kampala Convention. Furthermore, the Guiding Principles also serve as soft law and an important tool for international standard-setting. Although IDPs are not recognised as a separate legal entity, as with refugees, there are several fields of international law that are relevant to their protection.⁴⁵⁶ As such, it is inaccurate to claim that international law does not provide relevant protection to IDPs.

⁴⁵³ African Union 'First Session of Conference of States Parties for the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa' Concept Note, available at https://au.int/web/sites/default/files/newsevents/conceptnotes/32304-cn-concept_note_-_cosp_meeting_2017.pdf; accessed on 1 September 2017.

⁴⁵⁴ Abebe op cit note 405 at 36.

⁴⁵⁵ Ibid at 6.

⁴⁵⁶ Ibid at 36.

The Kampala Convention does not provide IDPs with a distinct legal status, and thus, in contrast to the case of refugees, there is no need for proof of status for IDPs to access protection and assistance.⁴⁵⁷ This is beneficial as it allows everyone to access assistance in a state of emergency. Furthermore, this also allows for assistance to host communities affected by influxes of IDPs.

Consequently, it is clear that there are relatively extensive provisions in IHRL and IHL that are applicable for the protection of IDPs' right to physical security in Nigeria. However, the internationalisation of the phenomenon of internal displacement continuously helps the development of new international and regional legal instruments making specific reference to IDPs.⁴⁵⁸ Furthermore, these developments with a focus on IDPs are important and contribute to strengthening the protection and assistance of IDPs. Yet, IDPs in Nigeria can currently claim protection through an array of rights under IHRL and IHL. It is evident from the discussion in this chapter that there are significant successes achieved through the development of a legally binding framework on the protection and assistance of IDPs in Africa through the Kampala Convention. Thus, it is reasonable to conclude that IDPs are not without protection under international law, and as such there is not necessarily a gap *per se* that fails to consider IDPs, although the increasing focus and development of specialised legal frameworks to enhance their protection is welcomed and needed. Though, the influence and significance of the current legal human rights framework, including the Kampala Convention, and future developments will depend on states' ability to implement, domesticate, and enforce their provisions.

6.5 Compliance with international human rights standards

Based on the previous discussion, there are various international legal frameworks in place relevant for the protection of IDPs' right to physical security in Nigeria. Considering the reported violations of IDPs' right to physical security as documented by reports in previous chapters of this dissertation, it is evident that there are challenges to Nigeria's compliance with human rights standards in the protection of IDPs. The reported continuance of violations of IDPs' right to physical security conducted by both Boko Haram, Nigerian security forces, and private individuals indicates that

⁴⁵⁷ Abebe op cit note 405 at 158.

⁴⁵⁸ Ibid at 36.

although there are international legal frameworks in place for the protection of IDPs, the *de facto* situation in north-eastern Nigeria is very different. Consequently, although there are international legal frameworks in place, it does not imply implementation and compliance to better the situation for IDPs.

Nigeria has a responsibility to implement and enforce the human rights conventions it ratifies. Although security measures are legitimate and necessary based on Boko Harams tactics, those measures must be proportionate and meet international standards.⁴⁵⁹ It is not adequate that Nigerian IDPs displaced due to conflict and generalised violence by Boko Haram must fear abuse and violence from the government and those in charge of their protection and assistance. Although measures are taken by the government through developing legal framework, policies and action plans, and the security forces are advised and trained on human rights, more must be done to ensure compliance with the law.⁴⁶⁰

Through the Kampala Convention, Nigeria is legally obliged to hold perpetrators of arbitrary displacement and human rights violations against IDPs accountable. It has been argued in this dissertation, based on reports and documentation, that there has been limited prosecution and accountability of accused security forces and Boko Haram members.

When the state struggles to protect and assist its citizens, the role of international organisations and humanitarian agencies becomes important. Although highly controversial, international organisations like the AU and the UN Security Council can take measures of intervention in cases war crimes, crimes against humanity, genocide and to respite international peace and justice. Additionally, international organisations like the AU and UN, as well as ECOWAS, play an important role in creating, promoting, implementing, and enforcing international human rights. Humanitarian agencies are essential in contributing to provide assistance and protection to IDPs so that the state is able to meet their obligations. In doing so, it is critical that these agencies and organisations respect and promote human rights to prevent human rights violations. Furthermore, humanitarian agencies and international organisations also

⁴⁵⁹ Human Rights Council op cit note 232 at 18 para. 72.

⁴⁶⁰ Ibid.

carry an essential responsibility in monitoring Nigeria's compliance with its human rights obligations, so that violations can be reported and prosecuted. Although international organisations can play an effective supporting role in assisting and protecting IDPs, they cannot replace a government's protection of its own people.⁴⁶¹

⁴⁶¹ d'Orsi op cit note 352 at 114.

7. Conclusion

This dissertation sought to answer whether the protection of IDPs' right to physical security in north-east Nigeria complies with international human rights standards. It has explored the international human rights protecting IDPs' right to physical through emphasising the right to life, freedom from torture and other cruel, inhuman and degrading treatment and punishment, and the right to liberty and security of person. It has based its research on internal displacement caused by the armed conflict between government forces and Boko Haram, and the generalised violence and human rights violations caused by the conflict. Through reports and documentation of violations of the right to physical security of IDPs, it is argued that the right to physical security of IDPs in north-eastern Nigeria is infringed upon. Furthermore, this dissertation has studied the measures taken by the Nigerian government and international organisations relating to humanitarian assistance, legislative, and policy measures, as well as efforts to hold perpetrators of human rights violations accountable. Though focusing particularly on the Kampala Convention, and based on the findings of human rights violations, this dissertation has investigated whether the protection of IDPs in Nigeria complies with international human rights standards.

The international *de jure* protection of IDPs in Nigeria is relatively sufficient as the government has ratified several human rights conventions and IHL. These, in conjunction with the Nigerian constitution, provide a solid framework for the protection of IDPs' right to physical security. As such, there is not necessarily a gap in international law failing to consider IDPs. Despite these legal frameworks, various violations of IDPs' right to physical security are reported.

Consequently, it becomes clear that the *de facto* protection of IDPs' right to physical security is not in accordance with the available *de jure* protections to IDPs in Nigeria. Although Nigeria receives international assistance, the protection of IDPs ultimately falls on the ability of the state to respond to their needs and protect them from the armed conflict. Lacking domestication, implementation, and enforcement of IHRL and its mechanisms, like the Kampala Convention, leads to violations of IDPs' right to physical security and it allows for impunity for perpetrators. Consequently, the *de facto* enforcement of the available international legal frameworks in relation to IDPs'

right to physical security do not comply with international human rights standards and the Nigerian government is failing to uphold its obligations towards the Kampala Convention, IHRL, and IHL.

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